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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 133/2006

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FORM No. 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org. App. / Misc Petn / Cont. Petn / Rev. Appl. 133/04

In O.A.

Name of the Applicant(s) ... Dipen Kumar Bordoloi

Name of the Respondent(s) Mr. U. L. Tora

Advocate for the Applicant ... Mr. U. K. Mairi, Mr. B. Sarma

Counsel for the Railway/CGSE

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

2.6.2004

Heard Mr. B. Sarma, learned counsel for the applicant.

The application is filed
is filed/C. F. for Rs 10/-
deposited vide P. B. D.
No. 110389587

Dated 1/6/04

Issue notice to show cause as to
why the application shall not be
admitted, returnable within four weeks.

List on 8.7.2004 for admission.

Dy. Registrar

1/6/04

K. P. Prahadan
Member (A)

Notice & Order 21.7.04

Sent to D/Section

for issuing to

respondent nos

1, 2 & 3, by regd.

with A/D post.

1/6/04

D/ Memo No = 988 to

990, dt. 9/6/04.

1/6/04

A/D card return

from resp. No. 1 to 3 after

1/6/04. duly send.

Present: Hon'ble Mr. K. V. Sachidanandan
Judicial Member

• Hon'ble Mr. K. V. Prahadan,
Administrative Member.

When the matter came up for hearing
the learned counsel for the applicant
submitted that he would like to
get instructions as to whether for the
process of selection such notification
was issued or not by the Railways and
for such vacant post. He has made repre-
sentation as Annexure-1. Four weeks time
is allowed to the learned counsel for
the applicant to get instructions.

Post the matter on 23.7.04 for
Admission.

K. P. Prahadan
Member (A)

Member (J)

23.7.04. Present: Hon'ble Mr. K. V. Sachidanandan
Judicial Member
Hon'ble Mr. K. V. Prahladan, Administra-
tive Member.

When the matter come up for hearing the learned counsel for the respondents submitted that he wants to file written statement contending that the applicant has no right to file 'cause of action has arisen. There is no notification for recruitment/selection for against handicap quota. The learned counsel for the respondent submitted that Respondent No.1, Secretary Railway Board may kindly be deleted as he is unnecessary party. Registry is directed to delete the Respondent No.1. The applicant may file rejoinder if any, within two weeks. List on 9.8.04 for Admission.

Member(A)

Member(J)

lm

23.7.04. Present: Hon'ble Mr. K. V. Sachidanandan
Judicial Member.
Hon'ble Mr. K. V. Prahladan, Administra-
tive Member.

When the matter come up for hearing the learned counsel for the respondents submitted that he has filed written objectioncontending that the applicant has no right to file application and cause of action has arisen and it is not against any impugned orders. Therefore, the application is not maintainable. It is not against any notification for recruitment. The learned counsel for the respondents also submitted that the Respondent No.1, Secretary, Railway Board may kindly be deleted as he is unnecessary party. The Registry is directed to delete the Respondent No.1.

order dt. 23/7/03,
issuing to learned
counsel for the
both parties.

31/8/04
G/S

contd/

23.7.04. The applicant may file rejoinder if any, within two weeks. List on 9.8.04. for Admission.

DR D.
Member (A)

DR D.
Member (J)

Received copy
U.D.A. 1m
For
O. S. Anna
Advocate
4/8/04

9.8.2004

Ms. U. Das, learned counsel appearing on behalf of Mr. U. K. Nair, learned counsel for the applicant prays for adjournment. Prayer accepted.

List on 17.8.2004 for admission.

K. V. Balachandran
Member (A)

bb

17.8.2004

The applicant is physically handicapped and unemployed at present. The applicant submitted representation to the General Manager (P), N.F. Railway, Maligaon on 2.6.2003 to give employment since he belongs to a socially and economically backward family. He also prayed for employment in Group - 'C' or 'D' under the quota prescribed for physically handicapped persons. The respondents are directed to give reply to the representation dated 2.6.2003 submitted by the applicant sympathetically and as per rules within two (2) months from the date of receipt of this order.

The O.A. is disposed of. No order as to costs.

19.8.04
Copy of the
order has been
sent to the Office
for sending the
same to the applicant
as well as to the
Adv.

mb

DR D.
Member (A)

6

Date: 23.7.2004
Regd. No. 1 (Name)
Dated: 23.7.2004

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,

GUWAHATI.

IN THE MATTER OF :

O.A. No. 133/2004

Dipankar Bardoloi

... Applicant.

Vs.

1. Union of India

(represented by the

Secretary to the

Govt. of India,

Ministry of Railways,

Rail Bhawan, New Delhi)

2. The General Manager,

N. F. Railway, Maligaon,

Guwahati.

... Respondents.

The humble Written Objection to the admission of the above application is submitted most respectfully as under :

1. That, the respondents have gone through the application filed in the case and have understood the contention thereof.

2. That, the above case is not maintainable under law and fact of the case.

3. That, the applicant has got no right for filing the application. He is not a Government servant or any staff of any undertaking or statutory body as revealed from the application.

Contd....2

4. That, no cause of action has arisen in his favour. The application has not been filed ^{against} any impugned order nor for getting redress against any order or specific recruitment /selection notification etc.

5. That, the application suffers from mis-joinder of parties. The Railway Board, or the Secretary to the Government of India does not come to the picture in view of the devolvement of power under the Sections 3 and 4 of the Railways Act, 1989 where the Supervision etc. has been entrusted on the Zonal Railways, more so, when the recruitment matters etc. on the Zonal Railways have been entrusted on the Zonal Railways concerned and no reservation policy is involved for intervention by Railway Board.

As such, it is warranted that the name of Secretary, Railway Board as a party in the case be deleted from the list of respondents.

6. That, the contentions of the applicant as made in the different paragraphs of the application are not admitted for want of knowledge. No such representation of the applicant as annexed as Annexure-V of the application could be traced out in record.

7. That, in any view of the matter, the application is not maintainable before the Hon'ble Central Administrative Tribunal and the application is hit on the preliminary point of Jurisdiction/ maintainability.

8. That, in view of above, the application is fit to be dismissed.

..... Verification.

8

-: 3 :-

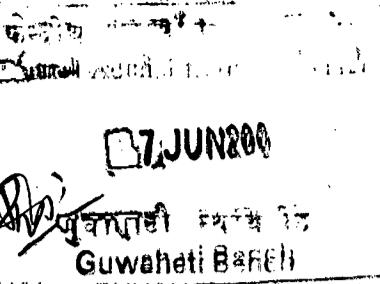
VERIFICATION

I, R. AAIYU son of
Late R. Ramasamy now aged about 39
years and working as Deputy Chief Personnel Officer/ HQ
N. F. Railway, Maligaon, do here state that the state-
ments made at paragraph 1 of the application is true to
my knowledge and those made at paragraphs 5 and 6 are based
on records which I believe to be true and the rest are my
humble submissions before the Hon'ble Tribunal.

✓ *AAIYU* 217

DEPUTY CHIEF PERSONNEL OFFICER
NORTHEAST FRONTIER RAILWAY
MALIGAON : GUWAHATI
FOR AND ON BEHALF OF
RESPONDENTS IN THE CASE.

Deputy Personnel Officer/HQ
N. F. Rly. / Maligaon
Guwahati



THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH
GUWAHATI

Q.A. No. of 2004

Shri Dipankar Bordoloi,

... Applicant

- Vs -

The Union of India & Ors.

... Respondents

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Filed by: U.K. Nair

Advocate.

THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH
GUWAHATI

Case No. of 2024

Shri Dipankar Bordoloi,

... Applicant

- Vs -

The Union of India & Ors.

... Respondents

SYNOPSIS

The Applicant has preferred this application against the arbitrary and illegal action on the part of the Respondent authorities in not considering his case for appointment against any post commensurate to his educational and technical qualification, against the quota prescribed for persons with physical handicaps. The applicant who is deaf and dumb has with great difficulty acquired the requisite qualifications for being considered for appointment against any post under the Respondent authorities. Inspite of the fact that there is a policy already in place and post having been already identified for appointing persons like the applicant having physical handicaps, the Respondent authorities have continued to ignore the case of the petitioner forcing him to come under the protective hands of Your Lordships praying for redressal of his grievances.

THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH

GUWAHATI

Q.A. No. of 2004

BETWEEN

Shri Dipankar Bordoloi,
S/O Sri Tulsi Bordoloi,
Resident of Belota, Gauhati-28.

30-7-04

-AND-

As per Hon'ble Court order dt. 23/7/04
Resp. No. 1, as hereby deleted
As per Hon'ble Court order dt. 23/7/04
30-7-04
1. The Union of India, represented by
the Secretary to the Government of
India, Ministry of Railways, Rail
Bhawan, New Delhi.

2. The General Manager, N.F. Railways,
Maligaon, Gauhati.

3. The General Manager(P), N.F.
Railways, Maligaon, Gauhati.

..... Respondents.

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

That the present application is not directed against any particular order, but is directed against the arbitrary and illegal action on the part of the Respondent authorities in not considering the case of the petitioner for appointment against a post commensurating to his educational and technical

qualification, against the quota prescribed for physically handicapped persons.

2. JURISDICTION OF THE TRIBUNAL :

The Applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The Applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the applicant is a citizen of India by birth and a permanent resident in State of Assam and as such entitled to all the rights, privileges and protections guaranteed under the Constitution of India and the laws framed thereunder.

4.2 That the applicant belongs to "Lalung" community which has been recognised as a Schedule Tribe under the Constitution of India (ST) Orders, 1950 and as such he is entitled to special protections/reservations as mandated, in services under the Union.

4.3 That the applicant states that he was born deaf and dumb and as such pursued his education from the Government BDS Deaf and Dumb School, Gauhati, a school specially established for deaf & dumb persons. The petitioner inspite of the physical handicap pursued his

studies and completed his Matriculation examinations, from the said school.

4.4 That the applicant belongs to the most backward section of the society and the financial constraints being faced by his family prevented him from pursuing further higher studies after completion of his Matriculation examination. The applicant taking advantage of the special programmes initiated by the Government for physically challenged persons, with a view to prepare them for being considered for appointment against posts reserved for such category of persons, underwent training in Commercial Trade & Computer applications from the Vocational Rehabilitation Centre for handicapped, Government of India.

4.5 That the applicant after successfully undergoing the said training is eligible for being absorbed against any Gr.III/ Gr. IV post under the Respondent authorities. The Government of India has from time to time formulated schemes and adopted policies towards reserving certain percentage of posts under it for persons with physical handicaps. The deaf and dumb persons are also covered under the said schemes & policies for such preferential appointment. The Respondent authorities have also formulated schemes in tune with the policies as adopted by the Government of India and posts have been also been identified against which persons having Physical handicaps can be appointed.

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4.6 That the applicant states that on numerous occasions he approached the Respondent authorities with prayers for consideration of his case against a post within the quota prescribed for physically handicapped persons commensurating to his educational and technical experience. The approaches as made by the petitioner failed to evoke any response and as such the applicant vide his representation dated 2.6.03 prayed before the Respondent No.3, for consideration of his case. The applicant along with his said representation enclosed all relevant documents pertaining to his educational and technical qualification.

A copy of the representation is annexed as
Annexure-1

4.7 That your applicant states that he is an unemployed physically handicapped youth and authorities need to sympathetically consider his case for appointment against any post within the quota prescribed for physically handicapped persons, in terms of the existing policies and schemes in this connection. There is no member in the applicant's family gainfully employed and they have got no any source of permanent income. As such there is great urgency for the applicant to secure a suitable engagement for maintainance of his family.

4.8 That your applicant submits that inspite of there being clear prescription from the competent authorities for taking appropriate steps for providing scope of

employment to physically handicapped persons, the Respondent authorities have failed to take appropriate measures in this connection, depriving many persons like the applicant of an opportunity to lead their with dignity. Such action/inaction on the part of the Respondent authorities is discriminatory, bad in law and is in clear violation to the policies adopted by the Government of India in this connection.

4.9 That your applicant submits that there are number of vacancies available in the office under the control and jurisdiction of the Respondents No.2 and 3 and against which the case of the applicant can be considered. The educational and technical qualifications as possessed by the applicant is sufficient for his engagement under the Respondent authorities.

4.10 That this application has been filed bonafide for securing the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 For that the impugned action/inaction on the part of the Respondent authorities in not considering the case of the applicant is per-se illegal, arbitrary and discriminatory.

5.2 For that a policy being in place for reserving certain percentage of posts in various categories of posts for persons suffering from, physical handicaps, the Respondent authorities cannot perpetually turn a blind eye to the pathetic conditions of persons like the applicant and steps are required to be taken

without any further delay for accomodating the applicant against any post basing on his educational and technical qualification.

5.3 For that the applicant having acquired necessary technical and educational qualifications for being considered for appointment against an appropriate post, within the quota prescribed for persons having physical handicaps, it was the bounden duty of the Respondent authorities to consider his case for such appointment.

5.4 For that non-consideration of the case of applicant has resulted in the policy adopted by the competent authorities towards filling up of a certain percentage of posts in services under the Respondents authorities being balantly violated.

5.5 For that the impugned action/inaction on the part of the Respondnet authorities is not sustainable and appropriate directions are required to be issued towards redressal of the grievances of the applicant. •

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has no other alternative and efficacious remedy except by way of filing this application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed

before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. BELIEES SOUGHT EDB :

Under the facts and circumstances stated above, the Applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs :

8.1 To direct the Respondent authorities, more specifically the Respondents No.2 and 3 to consider the case of the applicant for appointment against any suitable post commensurating to his educational and technical qualification, against the quota prescribed for physically handicapped persons.

8.2 To direct the Respondents to consider the case of the applicant for appointment against any Grade-III or Grade-IV post, if required by relaxing the recruitment rules, if circumstances so demand.

8.3 Cost of the application.

8.4 Any other relief/reliefs to which the Applicant is entitled to.

9. INTERIM ORDER PRAYED EDB :

Pending disposal of this application, Your Lordships may be pleased to direct the Respondent

authorities to dispose of the Annexure-I representation dated 2.6.2003 preferred by the applicant and consider his case for appointment against any post within the quota prescribed for physically handicapped persons.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE INDEX :

- i) I.P.O. No. : 11G 389587
- ii) Date : 1.6.2004
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

Verification...

VERIFICATION

I, Shri Dipankar Bordoloi, S/O Sri Tulsi Bordoloi, Resident of Belota, Gauhati-28, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 4, 1, 4, 2, 4, 3, 4, 4, 4, 5, 4, 6, 4, 10 and 5 to 12 are true to my knowledge ; those made in paragraphs — — — are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 31st day of May of 2004.

✓ Dipankar Bordoloi

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The General Manager (P)
N.E. Railway, Maligaon, Guwahati-11.

Sub : Application for consideration to the posts in
Group "C" or "D" under the quota prescribed for
physically handicapped persons.

Referring to earlier appeals in this connection.

Sir,

With due deference and profound submission, I beg
to lay the following few lines for your kind
consideration and necessary action.

1. That I am a physically handicapped person; being
Deaf and Dumb. I belong to a socially and economically
backward family and my community "Lalung" has been
recognised as a Schedule Tribe under the Constitution
of India (Schedule Tribes) Orders 1950 (as amended).

2. That I have passed my HSLC examination from
Government B.D.S. Deaf and Dumb School, Guwahati.
Further I have undergone training in Commercial Trade
and Computer applications from the Vocational
Rehabilitation Centre for Handicapped, Government of
India.

3. That, as stated earlier, I belong to an economically
and socially backward family and at present there is no
person gainfully employed in my family. The burden of
maintaining my family lies on my shoulders. Due to my
physically incapacity because of the said disability, I
am also finding it impossible to provide for even the
basic minimum needs of my family members.

Attested
by
W.K. Meir

4. That I have been approaching the authorities of your esteemed organisation, praying for consideration of my case for appointment against any suitable post under the quota reserved for physically handicapped persons. It may be stated here that I have registered with the vocational rehabilitation centre for handicapped Ministry of Labour (DGE&T), Government of India.

In view of the above, it is most respectfully prayed that your honour be pleased to consider my case for appointment against any suitable post in Group-"C" and/or Group-"D" against the quota prescribed for physically handicapped persons.

Should your honour be pleased to acced to my said request and thereby provide a mooring to me and my family members, I shall remain bound to your honour in deep gratitude.

Thanking you.

Yours faithfully

Dipankar Bordoloi
2.6.03

Enclo : Bio-data alongwith
relevant documents

(Shri Dipankar Bordoloi)
S/o Sri Tulsi Bordoloi
Resident of Beltola,
Guwahati-28