

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.413 of 2013

Cuttack this the 30th day of October, 2017

CORAM:

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

Subendhu Bhattacharjee, aged about 42 years, S/o. late Sambhunath Bhattacharjee, R/o. 31, Nabin Pally, PO-Morepukur (Rishra), Dist-Hoogli, PIN-712 205, West Bengal

...Applicant

By the Advocate(s)-M/s.G.K.Nayak
J.Dash
D.K.Mallik

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-751 017, Dist-Khurda, Odisha
2. Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha
3. Dy.C.P.O., Rail Recruitment Cell, odisha, 2nd Floor, East Coast Railway Sadan, Samanta Vihar, PO-Mancheswar, Bhubaneswar, Dist-Khurda, Odisha, PIN-751 017

...Respondents

By the Advocate(s)-Mr.N.K.Singh

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant had applied for the post of Khalasi in response to the advertisement issued by the East Coast Railway in Employment Notice No. PH/03&04/2005 dated 20.05.2005.

He had appeared in the Written Test and Physical Efficiency Test, but was informed of his non-selection by letter dated 13.6.2012 (A/11). Out of 15 posts of Khalasi meant for Physically Handicapped persons, 13 posts were earmarked for hearing impaired and 02 posts for visually impaired. Although the applicant had qualified the recruitment examination held on 08.03.2009 under the category "Hearing Impaired", his candidature was rejected on the ground that the copy of certificate (Madhyamik Pariksha) submitted by him in support of his date of birth and educational qualification was not attested by a Gazetted Officer. Aggrieved by the order dated 13.06.2012(A/11), applicant has filed this O.A. praying for the following reliefs:

"Under the circumstances, it is respectfully prayed that this Tribunal would be graciously be pleased to direct the Respondents, more particularly the Res.No.2 to appoint the applicant in the post of "Khalasi" on basis of his performance in the written test under PH Quota(hearing Impaired) against vacant post available with the Railway Authority.

And pass any other orders/order as deemed fit and proper in the facts and circumstances of the case".

2. Grounds on which the applicant has based his prayer are reproduced hereunder from Para-5 of the O.A.

- i) For that the action of the arrayed Respondents are violative of Articles of 14 & 16 of the Constitution of India.
- ii) For that the action of the Respondents are hit by the principles of Promissory Estoppels and there is no transparency in the selection process and the Respondents have adopted

unfair means to oust the applicant from selection process in order to accommodate candidates out of their choice.

- iii) For that Respondents fail to maintain the due process of law of selection.
- iv) For that Respondents illegally have given appointments to their favorites candidates ignoring the merit of the present applicant.
- v) For that the reasons assigned by the arrayed Respondents are contradictory to the facts and circumstances and so also the reasons stated have no rational basis for the non-selection of the applicant. The railway Authority being satisfied with the verification of original certificates pertaining to Educational Qualification of the applicant, then only recommended for Medical check up in order to preparing a Final List of the candidates for the post of "Khalasi".
- vi) For that the reasons assigned for non-attestation of Educational qualification certificates at a belated stage and discarding his selection on that ground creates not only immense displeasure but also ceases his rights to appointment.
- vii) For that the report of the Vigilance Organization has never been supplied to the affected and disqualified candidates in order to prove the authenticity of the document appended with the candidature.
- viii) For that on basis of Vigilance report and non-attestation of Educational Certificate appended to the candidature, non-selection of applicant to the post of "Khalasi" is otherwise bad in law and the action taken thereof by the Respondents is liable to be tinkered with by this Hon'ble Tribunal for fair adjudication".

3. Respondents in their counter-reply filed on 11.02.2014 have submitted that the Vigilance Department of the East Coast

Railway detected discrepancies in some applications. In the application of the applicant, it was found that he had not submitted the attested copies of the certificates in support of his qualification, physical disability and proof of community. The Employment Notice No.PH/03&04/2005 dated 13.04.2005 had clearly stipulated at Item10.1 that attested copies of final/provisional certificate and other documents should be attached to the application. Since the applicant did not fulfill the condition as notified above, his candidature was rejected.

Respondents have also submitted that approximately 6200 irregular applications have been rejected on various grounds such as: (i) applications are unsigned, (ii) signature not in Hindi or English, (iii) signature in Capital Letter, (iv) application without proper PWD certificate obtained from the competent authority, (v) application without requisite educational certificate, (vi) incomplete application etc. According to Respondents, there might have been many other meritorious candidates compared to the applicant who were eliminated on scrutiny and therefore, allowing the applicant's O.A. will result in injustice to them. They have cited the orders of this Tribunal in O.A. No. 574 of 2012 dated 2.11.2015 (Kabiraj Swain vs. Chairman, Railway Board) wherein this Tribunal under similar circumstances had dismissed the O.A. Respondents have also cited the judgment of the Hon'ble Supreme Court in Union of India & Anr. Vs. Sarwan Ram & Anr.

In Civil Appeal No.9388 of 2014 dated 08.10.2014 wherein the action of the Recruiting Organization in rejecting the candidature of the applicant for non-compliance of the conditions laid down in the application was upheld. Therefore, the respondents have argued that the O.A. should be dismissed as devoid of merit.

4. From perusal of the documents, it is clear that the applicant had qualified in the Written Test and Physical Efficiency Test. However, copies of the certificates attached to the counter-reply by the respondents show that some of the vital documents submitted by the applicant were unattested. We find that two other documents, i.e., mark sheet of the West Bengal Board of Secondary Education as well as the Admit Card for the said examination have been attested whereas Physically Handicapped Certificate issued by the Office of the Superintendent, WALSH (SD) Hospital, Serampore, Hooghly, West Bengal and Madhyamik Pariksha (Secondary Examination) Certificate issued by the West Bengal Board of Secondary Education are unattested.

5. This Tribunal had earlier considered a similar matter in O.A.No. 574 of 2012 and dismissed the same on 2.11.2015 with the following observations:

“It is the positive stand of the respondent-railways that while rejecting the candidatures of other candidates and also the applicant, they have without any discrimination and arbitrariness, applied the criterion as laid down in the Employment

Notice. Clause-10(1) and 11© of the Employment Notice, which in clear and unambiguous terms lay down that the candidates should enclose attested Xerox copies of the bona fide certificates in proof of (i) age, (ii) educational/technical qualifications, (iii) community for SC/ST/OB and (iv) disability, from competent authority with the application form as the enclosures. At the same time, Clause-10(4) of the Employment Notice speaks that the applications which suffer from material irregularities, such as unsigned, incomplete, illegible, without all enclosures, not in the prescribed format of the application, without attested copies of the certificates, etc., and applications which are in the opinion of the Railway Administration otherwise invalid will be rejected without intimation to the candidates. This position is not controverted by the applicant. But the case of the applicant is that the discrepancy was not grave or serious, and that the same cannot be pointed out at a later stage when the applicant was already allowed to appear in the examination and the medical test. The discrepancy should have been detected at the stage of initial scrutiny of the application. However, according to respondents, as a result of vigilance investigation, such discrepancies were detected in case of a large number of candidates and the cases which were found to be defective were rejected which is on the basis of uniform and unbiased application of the criteria. It is not that applicant was discriminated against. Since the respondent-authorities have made no discrimination in the matter, we do not find anything unjust committed by them. There is absolutely no doubt that respondent-authorities should have detected the mistake at the stage of scrutiny. To that extent, there is an administrative failure on the part of the respondents. Allegation of such irregularities has led to a vigilance investigation, and based on the findings, respondents took action to reject the applications having such lacunae uniformly in several cases. Applicant does not have an indefeasible right of employment. If the respondents would take a lenient view in

the case of the applicant, the consequence of such action will be adverse and widespread. We, therefore, do not find any illegality in the order of the respondents, even though we are constrained to observe that they have not demonstrated administrative efficiency in the matter of scrutiny of applications received in response to employment notice”.

6. The Hon’ble Apex Court in *Sarwan Ram & Anr. (supra)*

has also made a very pertinent observation reads as follows:

“Condition No.9.7 (i) is one of the conditions mandate mentioned in the employment notice. We are of the view that in non-compliance of such condition, it was always open to the competent authority to reject such application being incomplete. Respondent no.1 having failed to do so, the competent authority has rightly rejected the application. In such circumstances, it was not open to the High Court to direct the authorities to consider the case of respondent no.1 for appointment, sitting in appeal over the scrutiny of application by referring to certain certificate of length of service. High Court under Article 226 of the Constitution of India is not competent to scrutinize the applications filed for appointment and cannot substitute its own opinion based on some evidence to come to a conclusion whether the application form is defective.

In view of the reasons recorded above, we have no other option but to set aside the impugned judgment dated 28th May, 2013 passed by High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur in D.B. Civil Writ Petition No.13032 of 2011”.

7. Taking the facts of the case and the judicial precedents into consideration, we are unable to interfere with the decision of the respondents in rejecting the candidature of the applicant.

The O.A. is accordingly dismissed being devoid of merit. There shall be no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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