

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260000422015
Cuttack, this the 21st day of June, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)

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Sri Ashwini Kumar Behera, aged about 51 years, Son of late Gopabandhu Behera, At-404, ARYALAYA Apartment, Nuasahi, Nayapalli, Bhubaneswar at present working as Senior Section Engineer(Works), Con/Tender, E.Co. Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

...Applicant

(By the Advocate-M/s. J. M. Pattnaik, C. Panigrahi)

-VERSUS-

Union of India Represented through :

1. Secretary, Railway Board, Rail Bhawan, New Delhi.
2. The Member Engineering, Railway Board, Rail Bhawan, New Delhi.
3. The General Manager, E. Co. Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
4. The Chief Personnel Officer, E. Co. Rly, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751017.
5. The Principal Chief Engineer, E. Co. Rly, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
6. Chief Administrative Officer(Con.) E. Co. Rly, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
7. Shri S. Bajapayi, ADEN, Jagatpur, E. Co. Rly, Dist-Bastara, Chattisgarh.
8. Shri Sambhu Nath Ganguly, ADEN/Settlement/E. Co. Rly, Bhubaneswar.
9. Shri B. V. S. Murthy, SSE/P.Way/ARK, E.Co.RIY., Waltair.
10. Shri Lingaraj Padhi, SSE/W/C/E.Co.RLY., Bhubaneswar.
11. Shir Prasanna Kumar Sahu, SSE/W/WAT, E.Co.RIY, Waltair.
12. Shri Dayanidhi Pradhan, CVI (Engg.)/Dy. CVO/B, E.Co.Rly, Bhubaneswar.
13. Shri Sumit Kumar Bandyopadhyay, SSE/W/C/E.Co.Rly, Waltair.
14. The Chief Medical Director, East Coast Railway, Chandrasekharpur, Bhubaneswar.
15. The Director General/Railway Health Services, Ministry of Railways, Railway Board, New Delhi.

...Respondents

(By the Advocate- Mr. T. Rath)

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ORDER

S. K. PATTNAIK, MEMBER (J):

The applicant has filed this O.A. praying for the following relief:

- “i. To Quash the communication dated 01.12.2014(Annexure-A/13), memorandum dated 30.05.2014 (Annexure-A/11)I in so far as Sl.No.7 to 14 are concerned) and the offer of appointment/promotion dated 01.01.2015 (Annexure-A/12 and consequently be pleased to direct the Railway-Respondent to take the viva voce test and publish the panel;*
- ii. And to direct the Respondents to consider the case of the applicant for appointment/promotion to AEN Gr. B(non-field) like AEN(Planning), AEN(Design), AEN(TP), AEN(Land), AEN(General) etc in Engineering Department as has been given to other similarly situated SSEs;*
- iii. To direct the respondents to promote/appoint the applicant with all consequential service and financial benefits retrospectively;*
- iv. To ass any other order/orders as deemed fit and proper”*

By way of Interim relief, the applicant has prayed to restrain the Railway Respondents from issuing offer of promotion/appointment to the candidates at Sl. 9 to 14 or to keep one Post reserved. This Bench while declining to pass any such interim order on 30.01.2015, directed that **any promotion/appointment to the post, in question, will be subject to the result of the O.A.**

2. The Applicant's case in short runs as follows:

The Chief Personnel Officer, East Coast Railway, Bhubaneswar vide letter dated 26.03.2013 (Annexure-A/1) invited willingness of the enlisted Sr. Section Engineers(Civil Engineering Department) for appearing at the written test for formation of Group B/Engg. Combined panel of AEN through limited Departmental Competitive Examination(LDCE) against 70% quota Vacancies for the year 2009-11 and 2011-13. The Vacancies are meant to be filled up on the basis of seniority cum suitability. The name of the applicant has appeared at Sl.8 against UR-8 vacancies for the year 2011-13. East Coast Railway held a written test on 21.12.2013 and the result of the test was published on 25.02.2014. The

name of the applicant appeared at Sl. No.2 of said list of successful candidates published under Annexure-A/2. Further case of the Applicant is that as per the prescribed procedure before viva voce test, the qualified candidates has to be found medically fit. Accordingly, the applicant was subjected to medical test in Railway Hospital, Mancheswar, Bhubaneswar who has certified that the applicant is having "**Deficit Colour Perception(Red & Green)**" (under Annexure-A/3). In view of the medical report, the applicant preferred an appeal for consideration of his promotion to AEN, Group B on relaxed medical standard as per the Railway Board's letter dated 09.04.2007 under Annexure-A/4. However, on consideration of said appeal the Principal Chief Engineer, East Coast Railway, Bhubaneswar was pleased to order posting of the applicant against non field post in Group B, on the basis of which the Sr. Personnel Officer wrote a letter dated 15.04.2014 to CMS, E.Co.Rly, Khurda for re medical examination of the applicant, who after medical re-examination opined that "***the applicant appears to be a Border Line Colour Blind person***". While the matter stood thus, notice of readiness to appear at the Viva-Voce Test, whose names were shown in the enclosed list, was published on 21.04.2014 under Annexure-A/6 in which the name of the applicant did not figure. The applicant made a representation dated 28.04.2014 as his medical fitness was not considered. The applicant also prayed before the General Manager, East Coast Railway, to reserve one post till his grievance as per the Railway Board instruction is settled. The principal Chief Engineer, E.Co. Rly, Bhubaneswar who is the Competent Authority vide letter dated 18/20.06.2014 under Annexure-A/10 informed that the applicant can be accommodated in alternative technical Group B Posts (non field) like AEN (Planning), AEN(Design), AEN(TP), AEN(Land), AEN(General) etc in Engineering Department and requested Chief Medical Officer to give comment on the suitability of the applicant for Group B on

Promotion basis so that the Railway Board may be apprised in this regard. Thereafter East Coast Railway, Bhubaneswar sought the approval of the Railway Board, New Delhi to promote the applicant in alternative technical Group B Posts. While the matter stood thus, the Chief Personnel Officer, E.Co. Rly. Bhubaneswar published the provisional combined panel for promotion to Group B Post of AEN against 70% quota Vacancies on 30.05.2014 under Annexure-A/11. The Railway Board vide latter dated 01.12.2014 finally rejected the proposal sent by the East Coast Railway, Bhubaneswar under Annexure-A/13 to accommodate the applicant in Technical Group B Posts in Engineering Department on the ground that as the applicant is to retire in May, 2023 and it is not possible to insulate him from filed duty for such a long time and additionally there are few posts which would qualify for such consideration. Finally the Railway Board did not agree, on the proposal for relaxing medical fitness in respect of the applicant. The applicant has challenged the letter of Railway Board dated 01.12.2014 communicated vide letter dated 08.01.2015 under Annexure -A/13.

3. The grievance of the applicant is that the Railway Board did not agree to insulate him as he had long year of service i.e. till May, 2023. However, several persons have been promoted in the Technical Group B having disability. Accordingly, to the applicant Shri Pravat Bihari Mohapatra had approached this Tribunal which was allowed by this Tribunal and subsequently upheld by the Hon'ble High Court of Orissa and finally Shri Mohapatra was provided with alternative Group B Post.

4. Respondents contested this case by filing a counter. According to the respondents, for promotion as per Railway Board letter dated 31.10.1991, only those candidates who qualify in medical examination of prescribed format should be advised to appear in the Viva-voce test. Since the applicant *is “unfit for promotion to Group B (Tech.) services as ADEN”* and it was certified that the

applicant was colour Blind Person(Red & Green) he was not empanelled. Further case of the respondents is that only eligible candidates were called for Viva-voce on the basis of written examination result. Since the applicant was found unfit and could not fit for the posts calling him to viva voce test and question of giving promotion to him does not arise. Respondents further pleaded that though the applicant was declared fit in relaxed standard in terms of CMS/KUR's Physical Fitness Certificate dated 20.06.2014 his case was forwarded to Railway Board because the Railway Board is the competent authority to decide whether the applicant will be promoted to the Post of Group-B/AEN in non-field category or not. According to the Respondents very fact that the applicant's appeal seeking promotion by applying the relaxed standard disentitles him from making any grievance against the genuinely selected and promoted candidates. According to the Respondents Railway Board did not consider the case of the applicant for promotion in relaxed standard. Further, the case of the respondents is that the power for giving relaxation is vested with the Railway Board who did not agree. According to the Respondents, the Applicant is left with about 10 years of service and if he is inducted to Group B services by giving relaxation at one point of time, he will be entitled to induction in Indian Railway Service of Engineers(IRSE) which is an organized Group A services of the Railways and posting of persons with deficiencies in organized Group A services would be difficult as there is no higher post available to accommodate such persons consequent to their promotion/induction in Group A organized services.

05. Respondents have filed a copy of the judgment of the Hon'ble High Court of Orissa passed in WP(C) No. 8731/2004 wherein Their Lordships observed as under:

*"We are of the view that in the facts and circumstances of the case of the Railway authorities have a valid point. In AEN Group B post colour blindness **is a bar in proper discharge of duties and in such cases the promotion of the petition will not be in the public interest.***

There Lordships further observed that Opposite party's deficiency in vision may be considered for promotion to any Group B Posts in which the opposite Party's deficiencies in vision may not be a bar".

08. Ld. Counsel for the Railway Respondents has placed reliance on a decision of Hon'ble Supreme Court passed on 09.07.2009 **UOI Vs. Devendra Kumar Pant and Ors.** (Civil Appeal No. 4668/2007) wherein ***Their Lordship's clearly observed that the promotion shall not be denied to a person on the ground of his disability only if the disability does not affect his capacity to discharge the higher functions of a promotional posts.*** Since the Railway Board in the instant case did not agree to give promotion to applicant on relaxed standard, no judicial interference is permissible as this Tribunal is not competent to say whether any employee with Physical disability can handle the higher post which is the prerogative of the Railway Board. There is no bar for promotion of Physical Handicapped person provided it does not affect his capacity to discharge the higher functions of a promotional post. In the instant case, it cannot be said that the colour blindness employee can discharge the duties in technical Posts in the Railway where safety of the passengers is primary responsibility of the Railway Administration. Since there is nothing wrong in the approach of the Railway Board, no interference is called for.

09. In view of the discussion made above, the O.A. being devoid of merit is dismissed. No costs.

(M. Sarangi)
Member(Admn.)

(S. K. Pattnaik)
Member (Judl.)

