

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO. 812 OF 2011

Cuttack this the 8th December, 2017

CORAM:

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

Y.Pramod Kumar Patnaik, aged about 39 years, S/o. of Sri Y.S.S.Patnaik, an aspirant for being absorbed as Substitute in Group D now staying at Quarter No.A/175/D(Side) Loco Colony,Jatni, PIN-752 050

...Applicant

By the Advocate(s)-Mr.G.Rath

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist-Khurda, PIN-751 017
2. The Chief Personnel Officer, E.Co. Railway, 2nd floor, South Block, ECoR Sadan, Bhubaneswar, PIN-751 017
3. The Senior Divisional Pesonnel officer, East Coast Railway, Khurda Road Division, PO-Jatni, Dist-Khurda, PIN-752 050
4. The Sr.Divisional Eelectrical Engineer (G), East Coast Railway, Khurda Road Division, PO-Jatni, dist-Khurda, pIN-752 050
5. The Sr.Section Engineer(Power),Electrical, E.Co. Railway, Khurda Road, PO-Jatni, Dist-Khurda, PIN-752 050

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant has challenged the communication dated 28.7.2005 in which he has been informed in response to his representation dated 21.6.2005 that the recruitment in Group-D in Railways will be made through open advertisement and

hence he was advised to apply for the group -D post as and when notification is issued for the same through Local Newspapers or in the Employment News. The applicant claims that he had rendered voluntary service at the time of Super Cyclone in 1999 in restoring normalcy of power supply in the Railways. A merit certificate was issued to him dated 9.3.2000 by the Sr. Divisional Electrical Engineer, S.E. Railway, Khurda Road. He had submitted representations repeatedly for appointment as Substitute in Group-D service. The impugned letter dated 28.7.2005 was issued to him in response to his representation dated 21.6.2005. Aggrieved by the impugned letter, he submitted another representation dated 10.1.2007 to the General Manager, East Coast Railways for providing him a job of substitute in Group-D service. He was issued another certificate by the Sr. Section Engineer(Power) Electrical, East Coast Railways on 23.06.2007 commending his voluntary service. He has cited the Railway Board's letter No. E(NG)65 LR 1-1 dated 01.09.1965 and No. E(NG)II-2001/SB/2 dated 04.01.2011. He has also submitted that the Sr. Divisional Personnel Officer, East Coast Railways in his notification dated 26.3.2009 has published a list of 10 candidates, who, with the approval of the General Manager East Coast Railways have been considered to be engaged/appointed provisionally as Substitutes in Group-D category. He alleges that his case has not been properly placed before the General Manager due to which

he has not been appointed as a Substitute in Group-D. He also claims that the Sr.DPO, Khurda Road vide his letter dated 16.7.2009 under the Right to Information Act has informed that total numbers of 164 persons have been appointed as Substitutes by the General Manager, East Coast Railways, Bhubaneswar under his discretionary quota between 1.1.2007 to 30.6.2009. Similarly between July, 2009 to November, 2010, 15 fresh faces have been engaged under the discretionary power of the General Manager, East Coast Railways, Bhubaneswar, as per information obtained under the RTI Act. Therefore, the action of the respondents in not engaging him as Substitute in Group-D is illegal, arbitrary and in violation of Article 14 and 16 and 21 of the Constitution of India. The applicant claims that he has a legitimate expectation of job as Substitute from the respondents. He has relied upon the judgment of the Hon'ble Apex Court in Ram Pravesh Singh & Ors. Vs. State of Bihar & Ors. [(2006) SCC (L&S) 1986] to support his argument of legitimate expectation. As per his contention, the law is well settled that a person who is identically situated, denial of a job to him is violative of Articles 14, 16 and 21 of the Constitution of India. Applicant has therefore, filed this O.A. praying for the following reliefs:

- i) To quash the Chief Personnel officer, E.Co.Rly., Bhubaneswar's letter No.ECoR/Pers/Pt-C/EA/YPKP dated 28.7.2005 (Annexure-A/3);
- ii) To direct the Respondents to consider the case of the Applicant for engaging/appointing as Substitute

in Group D post with retrospective effect on notional basis;

- iii) To place the recruitment files based on which the Annexure-A/6, A/7 and A/8 have been issued;
- iv) To pass any other order/orders as deemed fit and proper.

2. Respondents in their reply filed on 17.2.2016 have denied that the applicant has any enforceable right through the present O.A. They have clarified that Substitutes refer to persons engaged in Railway Establishments on regular scales of pay & allowance applicable to posts falling vacant and where the process of filling up is delayed and the post cannot be kept vacant due to exigencies of work. These posts fall vacant on account of railway servants being on leave or due to non-availability of permanent or temporary railway servants in posts which cannot be kept vacant. The applicant's representation was considered and rejected since there is no need to dispose of repeated representations. He could not be engaged as Substitute since he did not submit a formal application for a Group-D post as and when notification was issued. The Respondents also claim that there is no record of any certificate having been issued to the applicant on behalf of the railways for voluntary service during the super cyclone in 1999. The claim of the applicant is illegal and not sustainable in the eyes of law. The applicant has been correctly advised to apply through an open advertisement for Group-D post.

3. We have heard the learned counsel from both the sides. It is quite obvious that the applicant has no legal right to be considered for the engagement as a substitute. The various instructions for engagement of substitutes issued by the Railway Board from time to time show certain procedure to be followed. The Respondents have enclosed to their reply the latest instructions on the engagement of Substitutes issued vide RBE No.157/10 dated 17.9.2010 as per which Substitutes can be engaged only under the following instructions.

“3.1 Substitutes in erstwhile Group ‘D’ should be engaged with the prior personal approval of the General manager, while those in Group ‘C’ shall require prior approval of the Railway Board. They should be engaged only in the following circumstances:’(i)The process of filling up of vacancies is delayed; and(ii)The posts cannot be kept vacant without adversely affecting the railway services:

3.2. Maximum number of substitute that can be engaged in a year in erstwhile Group D posts.

(i) Maximum number of substitutes which can be engaged in a financial year in the following categories would be 10% of the vacancies calculated as on 1st April of the year to be filled up during the financial year:

(a) Safety;
 (b) Train operations (open line staff of Operating, Mechanical, Civil, Electrical, S&T and Electrical).

(ii) For other categories, the maximum number of substitutes that can be engaged is 2% of the vacancies in these categories.

Chief Personnel Officer (CPO) will calculate these 10% vacancies at the beginning of each financial year.

3.3. Substitutes in erstwhile Group D should be engaged as per following practice/procedure:

- (i) Applications addressed to General Manager will be received in General manager's Office from various sources;
- (ii) Committee of three Senior Administrative Grade (SAG) officers to be nominated by General manager will scrutinize applications and make recommendations which will be put up for approval of General Manager through Chief Personnel Officer (CPO):
- (iii) The recommended applications by the Committee will be forwarded to the Personnel Department for verification of certificates etc.
- (iv) After due verification of educational qualifications, certificates etc., the eligible applications along with the requirement of substitutes received from DRMs/Heads of Units, through the Chief Personnel officer, will be put up for General Manager's approval, by the Personnel Department;
- (v) Keeping the exigencies of service and suitability of the candidates, General Manager will decide the Department and Division/Unit where the candidate is to be engaged as per para 3.2.
- (vi) Formal letter of engagement will be sent to the Division/Unit by the Personnel Department.
- (vii) To avoid any fraud/impersonation etc., the Division/Unit will get the letter verified/authenticated from

COP's office and then issue Engagement Letter to the candidate.

(viii) Proper records should be maintained with reference to the number of applications received, number of applications rejected etc. Records of the applications which are no longer required to be retained should be shredded/weeded out.

4. Although the applicant had applied for engagement as a Substitute, his rendering of voluntary service has no bearing on his eligibility for such an engagement. The O.A. in the present form is therefore not maintainable. This Tribunal has no jurisdiction to entertain his prayer for engagement as a Substitute on the ground of voluntary service rendered in the past. However, since the RBE No.157/10 prescribes the procedure for engagement of a substitute, should the applicant apply in future for engagement as Group D Substitute in response to an advertisement his case could be considered by the Railways purely on merit, based on his qualification and eligibility. Under the circumstances, the O.A. is dismissed as devoid of merit. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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