

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

T. A. No. 260/006 OF 2017
Cuttack, this the 06th day of November, 2017

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

.....

Bhabani Sankar Mishra,
aged about 21 years,
Son of Sri Fakira Mishra,
Vill-Gokulapur P.O-Basudevpur,
P.S-Puri Sadar, District: Puri.

...Applicant

By the Advocate-M/s. P. K. Mishra, Smt. P. Mishra

-VERSUS-

Union of India Represented through

1. Divisional Railway Manager, South Eastern Railway, Khurda Road, P.O/P.S. Jatni, Dist. Khurda.
2. Senior Divisional Personal Officer, South Eastern Railway, Khurda Road, P.O/P.S. Jatni, Dist. Khurda.
3. Divisional Personal Officer, South Eastern Railway, P.O/P.S. Jatni, Dist. Khurda.

...Respondents

By the Advocate- Mr. T.Rath

.....

O R D E R

S.K.PATTNAIK, MEMBER (JUDL.):

The petitioner has filed this application for quashing of the notification dated 03.03.1997 (Annexure-2) by which applications were invited for total 30 number of posts for Physically Handicapped persons (10 posts reserved for Orthopedic Handicapped persons). The applicant

has further prayed to declare that he has qualified in the written test in Grade-C category post and he be allowed to appear in viva voce test.

2. The background giving rise to the present litigation may be shortly stated.

Originally, the applicant had filed O.J.C.No. 15595/1998 for quashing of the advertisement dated 03.03.1997 and in the alternative to declare him as qualified in the written test in Group-C category and to allow him to appear in the viva voce test conducted for 10 posts for Orthopedic Handicapped persons. The Learned Single Bench of the Hon'ble High Court of Orissa vide judgment dated 21.01.2016 disposed of the Writ Petition directing the Respondents to consider the candidature of the applicant for selection after subjecting him to written and viva voce test. Being aggrieved by the said order of the Learned Single Judge, the Railways preferred Writ Petition No. 156/2016 before the Division Bench and the Hon'ble High Court vide order dated 21.03.2017 categorically observed that the dispute comes within the jurisdiction of the Central Administrative Tribunal and allowed the Writ Appeal setting aside the judgment of the Single Judge and transferred the entire case record to this Tribunal with a further direction to dispose of the same within a period of three months.

3. The applicant's case, in short, runs as follows:

The petitioner being a Physically Handicapped person had applied for the job pursuant to the advertisement dated 03.03.1997 under S.E.Railways, which was not accepted by the authorities. Consequently,

he approached the Hon'ble High Court in O.J.C.No. 5262/1997 seeking a direction to the Respondents to accept his application and to allow him to sit in the examination scheduled to be held amongst the Handicapped persons for the post reserved for Physically Handicapped persons. The Hon'ble Court while disposing the said Writ vide order dated 10.04.1997 (Annexure-3) directed Divisional Railway Manager, Khurda Road (Opposite party No.2) and Sr. Divisional Personnel Officer, S.E.Railways, Khurda Road (Opposite party No. 3) to accept the application of the petitioner directly for the post of Group-C and further directed that they shall not insist for sponsoring his name by Employment Exchange. The grievance of the applicant is that even though he furnished the copy of the order of the Hon'ble High Court dated 10.04.1997 passed in O.J.C. No. 5262/1997, along with application format duly filled in by the applicant in Physically Handicapped quota (Annexure-A), he was neither called for written test nor for viva voce test. When the result of the written test was declared on 10.09.1998 and he could learn that the viva voce test would be held on 14 and 15 of November, 1997, he approached the Hon'ble High Court in O.J.C. No. 15595/1998 by filing a Writ on 12.11.1998. The Hon'ble High Court on 12.11.1998 while issuing notice to the opposite parties also ordered that any appointment made pursuant to the viva voce test and written test shall be subject to the result of the Writ Petition.

4. Respondents contested the case by filing a counter. From the beginning, the case of the Railways was that they have not received

any application from the applicant and he was asked to put strict proof of submission of his application. This counter was filed on 22.07.1999.

5. On 20.12.2013, the applicant filed a rejoinder annexing a copy of the receipt by which the Sr. Divisional Personnel Officer, S.E.Railways, Khurda Road, had received the order of the Hon'ble High Court, along with the application form of the applicant, on 11.04.1997. After furnishing of this receipt (Annexure-A), Railway filed another objection to the rejoinder. According to the Respondents in paragraph-10 of the Writ Application No. 15595/1998, the applicant had stated that as per the direction of the Hon'ble court in the earlier O.J.C.No. 5262/1997, he had submitted his application on 13.04.1997 before the authority but in paragraph-3 of the present rejoinder the petitioner has stated to have submitted his application on 11.04.1997 before the authority. According to the Respondents, no such application was submitted by the petitioner from the date of advertisement on 03.03.1997 till the stipulated period, i.e. 15.04.1997, before the Railway administration, which is not in the knowledge of the authority and the present statement or fact made in the rejoinder is completely false and not correct. Further case of the Respondents is that aforesaid recruitment process has already been completed since 1998 and appointments have been given to the selected candidates subject to the result of the Writ Application as ordered by the Hon'ble High Court dated 12.11.1998 in Misc. Case No. 14343/1998. The Respondents while filing counter to the Misc. Case filed before the Hon'ble High Court dated 07.05.2015 had contended that the alleged

receipt now being shown while filing the rejoinder is misleading and 16 year old record and recruitment file is not available. The Respondents further pleaded that the petitioner had not submitted application on 11.02.1997 as claimed by him and since he has not appeared in the written test and vivo-voce test, is not eligible to be appointed.

6. Admittedly, the case relates to a recruitment process of 1997 and we are in fact at the fag end of 2017. The whole case of the applicant is that he had submitted his application in pursuance to the order of the Hon'ble High Court and had obtained a receipt on 11.04.1997, however, while filing the original Writ on 12.11.1998 before the Hon'ble High Court vide O.J.C. No. 15595/1998 he had not breathed a single word about filing of the application on 11.04.1997 or obtaining a receipt from Sr. Divisional Personnel Officer in token of acknowledgement of his application. The applicant has absolutely no explanation that under what circumstances the so called receipt, Annexure-A dated 11.04.1997, was furnished/annexed for the first time while filing the rejoinder only on 20.12.2013, and why such a material document was not filed at the time of initial filing of the Writ Petition way back in 1998. Admittedly, the written test was held on 03.08.1997 and the result of the written test was published on 16.09.1998. The applicant could have immediately approached the Hon'ble High Court/Tribunal for specific direction to allow him to appear in the written examination in view of the receipt granted by the authority but the applicant did not take any resort to that recourse and waited till 2013 to

file such a valuable document whose authenticity is also not free from suspicion. Had the applicant filed this receipt of 1997, at the earliest opportunity, then the officers of the Railway could have said whether the signature of the competent person is genuine or has been forged for the purpose of this case. Even if for the sake of argument, we assume that the applicant had furnished application on 11.04.1997 even though there was discrepancy regarding filing of application at first stage on 13.04.1997 and on subsequent stage it is 11.04.1997, we notice that the Ld. Counsel for the Railways has furnished in course of argument the Attendance Sheet of Physically Handicapped candidates dated 03.08.1997, which is a typed copy, and signature of 11 candidates have been obtained even though the entire list contained names of 15 persons in which the name of the applicant finds place under Sl.No. 3. So, once we find that the name of the applicant is in the Attendance Sheet of the written examination held in Ground Floor, Room No. 31, we have every reason to conclude that his application was received by the Railways. But the million dollar question is if the applicant did not appear in the written test, no fault can be found in the action of the Railways in omitting his name from the result sheet of written examination soon after publication of the written test result on 16.09.1998. Had the applicant appended the so called receipt dated 11.04.1997 (Annexure-A) while filing Writ Petition on 12.11.1998, the Hon'ble Court could have given a similar direction to arrange for his written test immediately. Since no receipt was filed, the Railway Board has pleaded that they have not received any

application of the applicant, though such a plea was palpably wrong and erroneous. Admittedly, the applicant did not appear in the written examination on the scheduled date. Had he approached the Hon'ble High Court for not allowing him to appear in the written examination in spite of submission of his application on 11.04.1997, the matter would have been different. There is no whisper of Annexure-A on the body of O.J.C. 15595/1998 and this was introduced only at a belated stage while filing rejoinder on 20.11.2013 by which time much water had flown in river Mahanadi, for which lapse the applicant is to blame himself. Firstly, he approached a wrong forum for his relief, i.e. instead of approaching the CAT he approached the Hon'ble High Court and, secondly, by not annexing the most material document at the time of filing the Writ Petition in 1998, his plea becomes belated, and not free from suspicion.

7. There is considerable force in the submission of the Ld. Counsel for the Railways that after a lapse of more than 2 decades, the recruitment file is not easily traceable and such submission cannot be thrown to the air. Had the applicant filed his receipt memo dated 11.04.1997 at least in 1998, the Hon'ble court could have called for the connected documents which the applicant did not resort to and now calling for such document becomes too belated. When other candidates appeared in the written examination and the applicant was not called for the same he should have agitated the same immediately after the written examination on 03.08.1997 without waiting till November, 1998 to file a Writ Petition. On considering the pros and cons of the entire case, we

do not find any substance in the assertion made by the Ld. Counsel for the applicant and do not find any irrationality on the conduct of the Railways for directing to hold a fresh written test more than 20 years after the original written test. The applicant, who was 21 years old at the time of filing the original Writ, has become more than 40 years old by now and no direction can be given for fresh written test and viva voce test at this distance of time as the applicant has become over-aged and was negligent in bringing the relevant receipt, at the earliest and rather at an appropriate time. Hence ordered.

8. O.A. being devoid of merit is dismissed.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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