



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O. A. NO. 466 OF 2012

Shri Shesh Dev Kua son of Charmu Kua aged about 43 years, by profession Unemployed, presently residing at Vill. Banmunda Dafai, P.O. Birmiritrapur, dist. Sundar Garh, P.S. Birmiritrapur, Pin 770033, State Orissa.

... Applicant

- Versus -

1. Union of India, service through the General Manager, Eastern Railway, Fairlie Place, Kolkata - 7000 01.
2. Chairman, Railway Recruitment Board, Kolkata, Metro Railway, A. V. Complex, Chitpur, Opposite to R. G. Kar Medical College & Hospital, R. G. Kar Road, Kolkata - 700 037.
3. Member Secretary, Railway Recruitment Board, Kolkata, Metro Railway, A. V. Complex, Chitpur, Opposite to R. G. Kar Medical College & Hospital, R. G. Kar Road, Kolkata - 700 037.
4. The Joint Director Establishment, Railway Recruitment Board, Kolkata, Metro Railway, A. V. Complex, Chitpur, Opposite to R. G. Kar Medical College & Hospital, R. G. Kar Road, Kolkata - 700 037.
5. The Assistant Secretary, Railway Recruitment Board, Kolkata, Metro Railway, A. V. Complex, Chitpur, Opposite to R. G. Kar Medical College & Hospital, R. G. Kar Road, Kolkata - 700 037.
6. The Chief Personnel Officer, Eastern Railway, Eastern Railway, 17, N. S. Road, Kolkata - 7000 01.

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7. Sr. Personnel Officer (T), Eastern Railway, Eastern Railway, 17, N. S.
Road, Kolkata - 7000 01.

... Respondents.

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O.A.No.466 of 2012

Coram : Hon'ble Mr. Sushanta Kumar Pattnaik, Judicial Member

Hon'ble Dr.(Ms.) Nandita Chatterjee, Administrative Member

For the applicant : Mr. J.R. Das, counsel

For the respondents : Mr. P.K. Roy, counsel

ORDER

Heard on : 26.07.2017

Order on : 28/7/17

Mr. S.K. Pattnaik, Judicial Member

Heard both sides.

2. In a second round of litigation the applicant, Sri Shesh Dev Kua seeks quashing of the speaking order dated 08.04.2011 (Annexure A-9 to the O.A.). The applicant further seeks for a direction to the respondent authorities to implement the order of this Tribunal passed on 29.11.2010 in the earlier O.As i.e. O.A.No.1491/2008 and O.A.No.1492/2008 (Annexure A-8 to the O.A.). The applicant in the instant O.A. has prayed for a direction to the respondents to provide him an alternative appointment stating that such alternative appointment is lawful and in the spirit of the decision of this Tribunal dated 29.11.2010 imparted in the O.A.1491/2008 and O.A.1492/2008.

3. Needless to say that the applicant in the instant O.A., Sri Shesh Dev Kua had approached this Tribunal earlier along with Ashish Kumar Kulla for a direction to the respondents to provide them alternative appointments. The basic response of the respondents was that no alternative appointment can be made for the railway servants after the Railway Board's Circular dated 25.05.2009 came into force. This Tribunal after an elaborate judgment and on careful consideration of the contentious issues not only quashed the impugned order but also directed the

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respondents to consider the claim of the applicants without application of the Railway Board's letter No.99/E(RRB)/25/12 dated 25.05.2009. So, in view of such categorical direction of this Tribunal the Railway authorities cannot deny appointment to the applicant under the umbrella of Railway Board's letter dated 25.05.2009. If the respondents were really aggrieved by the said order they could have challenged the same before the Hon'ble High Court which procedure they did not adopt.

4. In the earlier order dated 29.11.2010 in O.A.1491/2008 and O.A.1492/2008 this Tribunal had discussed as to how such Railway Board's circular of 2009 is not applicable to the present applicant. It was mentioned in the order that the said circular was not applicable to the applicants of the said O.As (one of whom is the applicant in the present O.A.) because they had applied under an employment notice of 2006 for which the examination was held on 21.01.2007 and the Railway Recruitment Board recommended to the General Manager on 17.08.2007 and the applicants after completion of all the formalities were asked to appear before a Medical Board for medical examination on 21.07.2008. The earlier Bench of the Tribunal opined that since all the process of recruitment was over by 2008, the Railway Board Circular of 2009 which is prospective in nature cannot be applied to the applicants. As in 2008 there was provision for giving alternative appointment as per available medical category of the candidate, the claim of the applicant for alternative appointment cannot be denied. Furthermore, this Tribunal cannot pass an order to make an earlier order of a coordinate bench infructuous. So, the respondents are bound to comply with the earlier order passed by this Tribunal on 29.11.2010. As the speaking order dated

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08.04.2011(Annexure A-9 to the O.A.) is in contrary to the norms and spirit of the earlier direction of this Tribunal in this matter , it is not sustainable in law.

5. Hence, the O.A. is allowed. The speaking order dated 08.04.2011 (Annexure A-9 to the O.A.) is quashed. The respondents are directed to comply with the earlier order passed by this Tribunal on 29.11.2010 in O.A.No.1492/2010 preferably within a period of 3 months as the matter has already been delayed, failing which, they will become susceptible to contempt proceeding.

6. No order as to cost.

(Dr. Nandita Chatterjee)
Administrative Member
sb

(Sushanta Kumar Pattnaik)
Judicial Member

