

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH AT RANCHI
OA/051/00164/18**

Date of Order: 11/09/2018

C O R A M
HON'BLE MR. A.K. PATTNAIK, MEMBER[J]
HON'BLE MR. PRADEEP KUMAR, MEMBER[A]

Yogendra Sawaiyan Son of Late Kanuram Sawaiyan, aged about 46 years, Resident of Vill- Purnia, P.O.- Chitimiti, P.S.- Manjhari, Dist- Singhbhum (West), Pin- 833201.

..... Applicant.

-By Advocate: - Mrs. Leena Mukherjee for Mrs. M.M. Pal

-Vrs-

1. Union of India through the General Manager, South Eastern Railway, Garden Reach-43.
2. Divisional Railway Manager (P), S.E. Railway, Chakradharpur Division, Dist- Singhbhum (West), Pin- 833102.
3. Sr. Divisional Personnel Officer, S.E. Railway, CKP Division, Chakradharpur, Dist- Singhbhum (West), Pin- 833102.
4. Asstt. Personnel Officer, S.E. Railway, CKP Division, Chakradharpur, Dist- Singhbhum (West), Pin- 833102.
5. State Disability Commissioner (Under the person with Disabilities) Project Building, Jharkhand State, Ranchi- 834002.

..... Respondents.

-By Advocate - Mr. Prabhat Kumar

O R D E R
[ORAL]

Per A.K. Pattnaik, J.M.:- This OA has been filed by the applicant under Section 19 of the Administrative Tribunal Act, 1985 with the following prayers:-

“(i) The respondents be directed to give employment to the petitioner on the basis of the Disability Certificate issued by the Medical Boards at par with the same and similarly situated persons.

(ii) The respondents be directed not to sit tight over the matter and to allow the petitioner to join his duties on the basis of the Disability Certificates issued by the Medical Boards in view of the order dated 10th March 2011 passed by this CAT.

(iii) The respondents be directed not to discriminate the petitioner and to extend the same benefits of appointment under handicapped quota to the petitioner on the basis of the Disability certificate issued by the Medical Board.

(iv) The respondents be directed to act on the basis of disability certificates issued by the Medical Board and to allow the petitioner to join his duties on the basis of the handicapped certificate within a specified period.

(v) Any other relief or reliefs for which this petitioner is entitled to.”

2. The sum and substance of the case as per the learned counsel for the applicant is that Vide Employment Notice dated 10.02.1999 issued by the DRM(P), CKP Division applications were invited in the prescribed proforma for recruitment of 44 Group 'D' category posts under handicapped quota [15 for Visually Handicapped (VH), 15 for Orthopaedic Handicapped (OH) and 14 for Heard of Hearing (HH)] in the scale Rs. 2550-3200/- (RSRP) of CKP Division in S.E. Railway out of which 6 posts for SC category, 5 posts for ST category and 11 posts of OBC category were reserved. In Column-VI of the said Employment Notice it was categorically mentioned that the medical certificate in support of physically handicapped should have been issued by Civil Surgeon of the District and the last date of receipt of application was fixed as 26.03.1999. Vide order dated 12.12.2000 the applicant was called for the selection test and being found qualified for the post in question against the handicapped quota appointment letter was issued to the

applicant on 11.1.2001 for his appointment to the post of Group 'D' as a physically handicapped person against the handicapped quota. It is submitted that appointment letter was issued to the applicant by APO/CKP after consideration of the disability certificate produced by the applicant by the duly constituted Medical Board. It is submitted that after his appointment order the applicant was sent for medical examination wherein he was held medically unfit, but no order was issued to that effect. The learned counsel further submitted that other candidates, namely, S/Shri Vidya Sagar Mahato, Shyam Bahadur Sonar, Bhagwan Tamsay, Prabir Kumar Biswas, S. Chandrasekhar Rao, Hari Yadav and Subhash Yadav who were also issued appointment letter along with the applicant against the handicapped quota against the same notification dated 10.02.1999, were also declared medically unfit in the medical test. It is further submitted that before issuance of appointment letter a memorandum dated 09.01.2001 (Annexure A/1) was issued wherein the name of the applicant was mentioned along with some of the candidates mentioned above. It is submitted that when the above candidates moved CAT in OA 280/2012 (R), interim order dated 24.08.2015 was passed wherein they were allowed to join their duties against the handicapped quota on the basis of the handicapped certificate issued by the duly constituted Medical Board. The grievance of the applicant is that though fresh appointment letters were issued to the applicants in the said OA and

they were allowed to join their duties consequent upon the order of CAT the applicant was denied the said appointment.

3. Therefore, the learned counsel for the applicant emphatically submitted that it is a clear case of discrimination. On being questioned whether the applicant has availed the departmental remedy as stipulated under Section 20 of the AT Act, 1985 she has fairly submitted that the applicant has preferred a representation to respondent no.1 on 17.08.2017 (Annexure A/2) pointing out the injustice and discrimination being meted out to the applicant in case of appointment made under physically handicapped quota.

4. As his representation is stated to be pending before respondent no. 1, we dispose of this OA without entering into the merit of the case with direction to respondent no. 1 that if any such representation has been preferred on 17.08.2017 and the same is still pending consideration then the same may be considered keeping in mind the benefit granted to other candidates coming under physically handicapped category. After such consideration if the applicant's grievance is found to be genuine then the respondents are directed to consider his case for appointment under the physically handicapped category as has been granted to other similarly situated candidates as mentioned above and pass a reasoned and speaking order within a period of six weeks of receipt of this order.

5. With the aforesaid observation and directions, this OA is disposed of. No order as to costs. As prayed for by the learned counsel for the applicant, a copy of this order along with the copy of OA in paper book format along with his representation dated 17.08.2017 be submitted to respondents no. 1 by speed post for which she undertakes to deposit the cost with the registry within a period of 7 days.

[Pradeep Kumar]/M[A]

[A.K. Pattnaik]/M[J]

Srk.