

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/198/2019

Date of Reserve: 25.3.2019
Date of Order: 29.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Shri Shivmunisaw Gupta, aged about 33 years, S/o. Shivkumar Saw, Village/Post-Nawada, Via-Sahar, Dist-Bhojpur, Bihar-802 208.

...Applicant

By the Advocate(s)-M/s.D.K.Mohanty
S.Nayak

-VERSUS-

Union of India represented through:

1. The Chairman, RRB, E.Co. Railway, Railway Recruitment Cell, Headquarters, C-57/0, Rail Vihar, Chandrasekharpur, Bhubaneswar, Orissa-751 023.
2. The General Manager, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar-751 023.
3. The Deputy Chief Personnel Officer (Recruitment), Railway Recruitment Cell, East Coast Railway, Headquarters, C-57/0, Rail Vihar, Chandrasekharpur, Bhubaneswar, Orissa-751 023.

...Respondents

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

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs:

- i) To quash the letter under Annexure-A/12 and direct the Respondents to appointment the applicant in the post in question forthwith.
- ii) Alternatively, direct the Respondents to send the signature and LTI/RTI of the applicant to the GEQD/Govt. Hand writing experts under intimation to the applicant as per direction of this Hon'ble Court in O.A.No.513/2009.
- iii) To pass any other order/orders as deemed fit and proper.

2. Briefly stated, the facts of the matter are that applicant was an aspiring candidate for the post of Jr.Trackman & Helper-II in pursuance of Employment

Notice dated 28.10.2006 issued by the Railway Recruitment Cell, East Coast Railway, Bhubaneswar. After coming out successful in the examination, he was called upon for verification of documents. During the course of such verification, there was a mismatching of finger prints available on the application with those in the written examination and PET documents. In the above backdrop, the applicant was issued with a show cause notice dated 30.12.2008 as to why his candidature should not be cancelled. To this applicant submitted his reply and in consideration of the same, it was concluded that this was a case of impersonation and accordingly, the applicant was debarred for life from appearing in any examination of the RRCs/RRBs and also for appointment in Railway, besides rejection of his candidature for the selection to the post in question. On receipt of the same, the applicant submitted an appeal which too was rejected. Aggrieved with this, the applicant had approached this Tribunal in O.A.No. 513 of 2009. This Tribunal, vide order dated 21.09.2011 disposed of the said O.A. in the following terms:

"8. We do not find any distinction between the cases in hand vis-a-vis the above OA so as to take any contrary view in the instant case. Hence by applying the law of precedent laid down by the Hon'ble Apex Court in the case of SI Rooplal and Ors. Vs. Ltd.Governor through Chief Secretary, Delhi and Ors. (200) 1 SCC 844, the order under Annexure-A/6 dated 27.4.2009 and the order under Annexure-9 dated 07.09.2009 are hereby quashed. The Respondents are directed to send the disputed material of applicant to GEQD/Hand Writing Experts of the Government with intimation to the application to that effect, within a period of 30(thirty) days from the date of receipt of copy of this order with a request to the above authority to send their report as early as possible. On receipt of the report from the GEQD/Hand Writing Experts, the Respondents are directed to take further action in the matter. In any event the Respondents should intimate the applicant about the outcome of the reference to the GEQD within a period of three months from the date of receipt of this order".

3. In pursuance of the above order, the respondents vide letter dated 10.02.2012 (A/12) while enclosing the report of the GEQD dated 08.02.2012, communicated as under:

"On perusal of the GEQD report, the competent authority has decided to uphold the debarment & cancellation of candidature communicated to you vide this office letter No.ECoR/RRC/D/2006/01/828 dtd. 27.04.2009".

4. Being dissatisfied with the above decision, the applicant had again approached this Tribunal in O.A.No.449 of 2014 challenging the legality of letter dated 10.02.2012. This Tribunal vide order dated 25.06.2014 dismissed the said O.A. both on merit so also due to claim being barred by limitation.

5. It is the case of the applicant that he has received information through RTI Act dated 17.10.2014(A/14) and dated 15.02.2016(A/15) to prove his bona fide and in the circumstances, he has approached this Tribunal seeking for relief as referred to above. The applicant has pointed out that the information received through RTI Act would go to show that in order to harass him, the employees, those were invigilators deliberately stated that the LTIs/RTIs do not match. According to applicant, there will be perpetuation of miscarriage of justice if this Tribunal does not interfere in the matter.

6. This matter came up for admission on 25.03.2019 and after hearing the learned counsels for both the sides, orders were reserved on the question of admission.

7. We have considered the rival submissions. From the above narration of facts a short point that primarily emerges for determination is whether letter dated 10.02.2012 (A/12) which was the subject matter of change in the earlier round of litigation in O.A.No.449 of 2014 having been dismissed both on

merit and the claim being barred by limitation, could be challenged before this Tribunal again on the ground that the information received vide A/14 dated 17.10.2014 and A/15 dated 15.02.2016 gives rise to a fresh cause of action. It is not a case where the applicant on receipt of the information under the RTI Act has ventilated his grievance before the concerned authorities stating that the decision taken by them on the basis of GEQD report is patently wrong or illegal. This apart, in this O.A., the main relief sought by the applicant is to quash the letter under Annexure-A/12 and direct the Respondents to appointment the applicant in the post in question forthwith, which, as mentioned above, has already been dismissed by this Tribunal in O.A.No.449/2014. Therefore, further adjudication of the same dispute seeking for the same relief in the instant O.A. would tantamount to sit in appeal over the earlier decision of this Tribunal which per se is impermissible, apart from such a relief sought for being hit by the principles of constructive res judicata. We may also add that information received through RTI Act does not give rise to a fresh cause of action unless remedy available under the relevant service rules is exhausted by the aggrieved person. In view of, this Tribunal is not inclined to try and adjudicate the same matter under a new banner.

8. For the foregoing reasons, the O.A. is dismissed without being admitted. There shall however, be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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