

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/16/2015

Date of Reserve: 16.07.2019

Date of Order: 04.09.2019

CORAM:

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

B.Adinarayana, aged about 37 years, S/o. B.Gobinda, At-Puti Gopalpur, PO-Chhatrapur, Dist-Ganjam, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray

Smt.J.pradhan

T.K.Choudhury

S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharapur, Bhubaneswar, Dist-Khurda.
2. Divisional Railway Manager/E.Co.Rly/Khurda Road Division/Jatni, Dist-Khurda.

...Respondents

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

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Shorn of unnecessary details, it would suffice to note that earlier the applicant had approached this Tribunal in O.A.No.627 of 2006 questioning the legality and validity of order dated 16.06.2006 passed by the Railway Administration, rejecting his candidature for recruitment to the post of Gangman/Goup-D, on the grounds as under:

- i) The Photo on the admit card for physical test is different from the photographs of admit card for written test as well as Original Application.
- ii) There is difference between the signature of admit card for physical test and the signatures on the other documents.

- iii) You have claimed OBC status against SEBC certificate.

2. This Tribunal while deciding the aforementioned O.A. in Paragraphs 6, 7 & 8 of the order dated 21.7.2009, held as follows:

- "6. Admittedly, as per Advertisement vide Annexure-R/1, it is categorically mentioned that two recent passport size photographs duly attested and signed on the top by the candidates should be attached. And the applicant should also contain attested copies of certificate in support of age and educational qualification, certificate in support of caste issued by the competent authority, two self addressed envelopes of size (20 x 14 cm) duly affixing postal stamp of Rs.3/- (three) on each and one self-addressed stamped post card.
- 7. It is also not disputed that the applicant, while claiming his status under OBC category, has produced SEBC certificate. In all, the Respondents have submitted that the applicant could have been considered against the general category, but for the marks secured by him could not be so considered. Though this Tribunal had granted ample opportunity to the applicant to produce documentary evidence to establish that SEBC is having the same similar status and recognition as that of the OBC recognized by the Govt. Of India.
- 8. Having regard to what has been discussed above, we hold that the applicant has not been able to make out a case for any of the relief sought. Accordingly, the O.A. being devoid of merit is dismissed. No costs".

3. Challenging this order of the Tribunal, the applicant had approached the Hon'ble High Court of Orissa by filing W.P.(C) No.15985 of 2009. On Misc. Case No.17997 of 2013, the Hon'ble High Court passed vide Sl.No. 5 of order 20.01.2014 passed the following orders:

"Heard learned counsel for the petitioner. None appears for the opposite parties.

Considering the prayer made in the misc.case, in the interim, we direct that the representation filed by the petitioner for appointment to the post of Gangman, Group-D by relaxing his age shall be considered by the opposite party No.2, who shall take a decision thereon. Pendency of this writ petition shall not be a bar for opposite party No.2 to take such decision with regard to appointment of the petitioner to the post of Gangman, Group-D, if he decides so on the representation of the petitioner".

4. Thereafter, the applicant submitted a representation dated 01.04.2014 (A/4) to the Divisional Railway Manager, Khurda Road Division, East Coast Railway, who in compliance with the direction of the Hon'ble High Court disposed of the same representation, vide communication dated 02.05.2014 (A/5), which reads as follows:

"Sub: Representation for posting of Group-D(Gangman) empanelled in merit list vide serial No.494 of E.N./98:
 Ref: 1) Your representation dated 01.04.14.
 2) Order dated 20.01.14 of the Hon'ble High Court of Odisha passed in Misc.case No.17987 of 2013.

With reference to your above cited representation and in obedience to the order dated 20.01.14 of the Hon'ble High Court of Odisha passed in Misc.Case No.17985 of 2013, the matter has been examined and the following remarks are offered for your information.

1. In response to this Office Em;loyment Notice No.1/98, you had submitted an application dated 24.11.98 for the post of Gangman/Group-D. In the said application you had indicated that you belong to OBC category.
3. After the written test, a list of 1012 candidates was drawn (keeping in view the quotas allotted to various communities) to call the candidates for verification of the testimonials/documents. As per your merit position amongst the candidates in the OBC category, you were called for verification of your testimonials/documents by a duly constituted committee comprising of three J.A. Grade Officers of the Railway.

4. At the time of verification, it was observed that the photo on the admit card for physical test is different from the photo on admit card for written test as well as original application. It was also observed that there is difference between the signature on the admit card for physical test and the signatures on the other documents produced by you. Further you claimed OBC status against SEBC certificate, which you produced and you are unable to produce OBC certificate. As such your candidature was rejected, and you were informed of the same vide this office letter No.P/R/EN/1/98 dated 16.06.06.
5. Being aggrieved by the decision, you had approached the Hon'ble Central Administrative Tribunal, Cuttack Bench in O.A.No.627 of 2006, but your case was dismissed by the Hon'ble central Administrative Tribunal, Cuttack Bench, with the observation that the applicant has not been able to make out a case for any of the reliefs sought. As such the O.A. is devoid of merit.
6. Thereafter, you filed W.P.(C) No.15985 of 2009 in the Hon'ble High Court of Odisha, assailing the order dated 24th July, 2009 passed by the Hon'ble Central Administrative Tribunal, Cuttack Bench in O.A.No.627 of 2006. The W.P.(C) No.15985 of 2009 in the Hon'ble High Court of Odisha is subjudice.
7. After re-examining the case on receipt of your representation dated 01.04.14 and in obedience to the order dated 20.01.14 of Hon'ble High Court of Odisha passed in Misc.case No.17947 of 2013, it is seen that you have not produced any fresh document/evidence to justify reversing the decision taken earlier".

5. On receipt of the above communication and consequent upon a Memo being filed by the applicant, the Hon'ble High Court passed the following orders on 24.07.2014.

"In view of the Memo dated 14.7.2014 supported by an affidavit of the petitioner seeking withdrawal of the writ application, this writ application is dismissed as withdrawn. All interim orders stand vacated".

6. In the above background, the applicant has approached this Tribunal in this O.A. challenging the communication dated 02.05.2014 (A/5) and has sought for the following reliefs:

- i) To quash the order of rejection dated 02.06.2015 under Annexure-A/5.
- ii) To direct the Respondent No.2 to appoint the applicant in Railway as a Gangman/Group-D, for the post applied for.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

7. Opposing the prayer of the applicant, the respondents have filed a detailed counter, inter alia, questioning the maintainability of this O.A. on the ground that the O.A. is hit by the principles of constructive res judi cata. According to respondents, the Writ Petition filed by the applicant challenging the orders of this Tribunal in O.A.No.627 of 2006, having been dismissed by the Hon'ble High Court, the O.A. as filed by the applicant is not maintainable.

8. On the other hand, the applicant has pointed out that after receipt of the communication under Annexure-5, he had prayed for withdrawal of the above said Writ Petition before the Hon'ble High Court, since this Tribunal is the proper forum to decide the legality or otherwise of the said impugned communication. Therefore, the O.A. is maintainable. Secondly, the applicant has pointed out that after receipt of the impugned communication, he had further submitted a representation dated 28.08.2014 (A/7) to the Railway authorities clarifying the position that SEBC certificate which was

produced by him is the same as that of OBC certificate and therefore, the same should be considered for the purpose of providing him appointment to the post in question. According to applicant, the O.A. as filed by him, should be heard and decided on merit.

9. We have heard the learned counsels for the parties and perused the records. We have also gone through the rejoinder filed by the applicant.

10. From the elucidation of above facts, it is quite clear that the grounds on which the respondents had rejected the candidature of the applicant for appointment to the post of Gangman(Group-D) vide letter dated 16.06.2006 are the same as communicated to the applicant vide communication dated 02.05.2014 (A/5). Admittedly, the impugned communication dated 16.06.2006 was the subject matter of challenge before this Tribunal in the earlier round of litigation in O.A.No.627 of 2006 and as mentioned above, this Tribunal dismissed the said O.A. vide order dated 21.07.2009 being devoid of merit. The applicant although challenged the orders of this Tribunal in the Hon'ble High Court by filing W.P.(C) No. 15985 of 2009, but, later on, the same was allowed to be withdrawn by the Hon'ble High Court, in view of the communication made to the applicant vide A/5 dated 02.05.2014 so as to enable him to challenge its legality before this Tribunal. Be that as it may, the sole point for consideration in this O.A. is whether this Tribunal can consider and decide the same points again which have already been decided by this Tribunal in the earlier round of litigation and the

orders as passed holds good as on date, on the ground that vide impugned communication dated 02.05.2014 (A/5) rejecting the candidature of the applicant, a fresh cause of action has arisen. The answer to this is in the negative, simply because of the fact that as long as earlier order of this Tribunal dated 21.07.2009 in O.A.No.627 of 2006 governs the field, it would be against all canon of law try and adjudicate the very same disputed points in the guise of a fresh cause of action. Conversely, if at all this Tribunal decides the present O.A. on merit, it would amount to deciding the matter as an appellate forum over the decision already taken to this extent, the Tribunal is not invested with the powers, authority and jurisdiction. To sum up, we would say that since points to be decided herein have already been decided by this Tribunal in O.A.No.627 of 2007, by far, the present O.A. is hit by the principles of res judi cata.

11. For the foregoing reasons, we have no hesitation to dismiss the O.A. and accordingly, we dismiss the same, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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