Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 9th day of December 1998.

Hon'ble Mr. D. Dayal, Administrative Member
Hon'ble Mr. S.L. Jain, Judicial Member.

Original Application no. 389 of 1997.

1. Anil Kumar, S/o Sri Ram Sewak, r/o Chakia Ghat Phaphamau, Allahabad.

2. Mohammad Asraf, S/o Sri Minhaj Uddin, r/o 16/1, Pura Fateh Mohammad Sargam Road, Naini, Allahabad.

3. Narendra Kumar, S/o Sri Prem Chand, r/o Udhodas ka Pura Naini Allahabad.

4. Sunil Kumar Pandey, s/o Sri Hanuman Prasad Pandey, r/o village Tenduwavan Naini, Allahabad.

5. Abdul Aziz. s/o Sri Abdul Syed, r/o 53, Chak Dodi Naini Allahabad.

6. Babuji Yadav, s/o Sri Jai Naeain, r/o village Ram Sagar, Naini Allahabad.

7. Jai Chand, s/o Sri Shree Dutt, r/o 13, Mehduari Teliarani Allahabad.

8. Rakesh Kumar, s/o Jhhagadu r/o Balkashpur Soraon Allahabad.

9. Dinesh Kumar s/o Sri Sukhdeo Prasad, r/o Krishna Nagar, Kydganj Allahabad

10. Rajesh Kumar s/o Sri Jawaharlal, r/o Chak Abhai Ram Naini Allahabad.

11. Phool Chand, s/o Sri Ram Bakshi Lakhan r/o C/o Dhanpat Singh Yadav, Village Dubrajepur Post Office Naini, Allahabad.

12. Rakesh Kumar, s/o Ram Kishan r/o 14, Vicchle ka pura, Dhoomanganj, Allahabad.

... Applicant.

C/A Shri A.V. Srivastava

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.

2. Commanding Officer, Central Ordnance Depot, Chheoki, Allahabad.

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C/A Sri N.B. Singh

Alongwith Original Application no. 275 of 1997.

Subhash Chand , S/o Sri Chhangoo Lal, r/o village pali Karanpur Post Office Chhibiayan, District Allahabad.

... Applicant.

C/A Shri Shishir Kumar

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi.

2. Commanding Officer, C.O.D. Chheoki, Allahabad.

.... Respondents.

C/R Shri N.B. Singh

Original Application no. 340 of 1997

1. Rajesh Kumar Shukla, S/o Sri D.N. Shukla, r/o 349, Daraganj Allahabad.

2. Mithlesh Kumar, S/o Sri Jagan Nath, r/o Bheski P.O. Saidabad, Allahabad.

3. Laxmi Narayan, S/o Late Shri Ram Jiawan, r/o Naya Pura, P.O. Dandupur, Allahabad.

4. Ashok Kumar, S/o Sri Bindeshwari Prasad, r/o village Bhopatpur, P.O. Karelda, Allahabad.

... Applicants.

C/A Shri Shishir Kumar

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi.

2. Commanding Officer, C.O.D. Chheoki, Allahabad.

.... Respondents

C/R Shri N.B. Singh

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1. Union of India through Secretary Ministry of Defence, New Delhi.

2. Commanding Officer, Central Ordnance Deport, Chheoki, Allahabad.

... Respondents.

C/R Shri N.B. Singh.

Original Application no. 439 of 1997.

1. Kamal Babu Mishra, s/o Sri Lal Chandra Mishra, r/o 86 Mori Daraganj, Allahabad.

2. Deepak Kumar Pandey, s/o Late Sri Sant Ram Pandey, Care of Law Book Company, Sardar Patel Marg, Allahabad.

3. Vinay Prakash Tripathi, s/o Sri Lalta prasad Tripathi, r/o Vill & P.O. Umaria Sri, Allahabad

4. Sudhir Kumar, s/o Late Sri Shyamal Kumar r/o 75-A/218, Nihalpur, Allahabad.

5. Rajendra Kumar S/o Sri Tejpal r/o Care of Balram Singh 52/5 Industrial Labour Colony, Naini, Allahabad.

6. Dinesh Chander s/o Sri Kishori Lal Yadav, r/o 3/583, Avas Vikas Colony, Jhunsi, Allahabad.

... Applicants.

C/A Shri R.P. Singh , Sri B.P. Singh

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi.

2. Commanding Officer, C.O.D.-Chheoki, Allahabad.

... Respondents

C/R Shri N.B. Singh

Original Application no. 348 of 1997.

1. Om Prakash Mishra, s/o Sri Kant Mishra, r/o village and Post Kakra Dubawal, District Allahabad.

2. Krishna Lal Rajak, s/o Shri Ram Nath, r/o 315 Kuchi Sarak, Phulwari Chauraha, Allahabad.

... Applicant.

C/A Shri S.C. Rai

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi.

2. Commanding Officer, C.O.D. Chheoki, Allahabad.

... Respondents.

C/R Shri N.B Singh

Original Application no. 383 of 1997.

1. Uma Shankar, s/o Sri Ram Nath Singh, r/o 28-B/ Nai Basti Sheopuri Marg, Allahabad.

2. Sanjay Kumar, s/o Jagat Pal r/o Faizalpur post office, Hetapatti, District Allahabad.

3. Virendra Kumar, S/o Sri Hajari Lal, r/o Munsi Ka Pura, Jhansi, Allahabad.

4. Harish Chandra, s/o Sri Mahabir, r/o Akoda post Office Karchhana, District Allahabad.

5. Rajesh Kumar s/o Sri Ram Kumar, r/o 14, Vicchle ka Pura Dhoomanganj, Allahabad

6. Ajai Singh Pal, s/o Sri Udal Prasad, r/o 63, Lokhpur Naini, Allahabad.

7. Girish Chandra Nishat, s/o Shri Banwari Lal, r/o 785, Daraganj Allahabad.

8. Indra Kumar s/o Baiju r/o Sarpatio Road, Naini, Allahabad.

... Applicants.

C/A Shri A.V. Srivastava

Versus

Original Application no. 519 of 1997.

Manoj Kumar Rai, S/o Late Shri Abhai Narain, r/o House no. 343 Nai Basti Kydganj, Allahabad.

... Applicant

C/A Shri Shishir Kumar

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Commanding Officer, C.O.D. Chheoki, Allahabad.

... Respondents

C/R Shri N.B. Singh.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

These are seven Original Applications in which cancellation of selection held on 17.02.97 for selection of mazdoor in C.O.D. Cheoki, Allahabad, by a notice dated 11.03.97 have been challenged. A prayer has been made in all these Original Applications for setting aside the notice dated 11.03.97. They have been heard jointly and a common order is being passed.

2. The facts narrated in the applications and contained in original file of selection are that the Directorate

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General of Ordnance Services under instructions of Army Headquarters released 26 vacancies of mazdoors of which 6 were reserved for Backward classes, 6 for Scheduled Castes and 1 for Scheduled Tribes. A requisition was sent to the Employment Exchange for sending twenty names against each vacancy. The qualifications mentioned in the requisition were age between 18 & 25 for unreserved, 18 & 28 for the backward classes and 18 & 30 for S.C. and S.T. candidates. 'Physical fitness' was mentioned as another qualification. The Employment Exchange recommended 136 unreserved, 69 O.B.C., 63 Scheduled Caste and 19 Scheduled Tribe Candidates. The respondents by their letter dated 13.01.97 asked the candidates sponsored by the Employment Exchange to remain present for interview at C.O.D. Cheoki at 9 a.m. on 29.01.97. This interview was postponed by the Respondents by their letter dated 22.01.97 to the candidates advising them to see the news-papers for notification of the next date. The reason for postponement appears to be a letter from one Shri Rajesh Kothari, President Berozgar, Navyuvak Sangh, Allahabad drawing the attention of the local respondents to the requirement of newspaper advertisement besides requisition to Employment Exchange arising from a judgment of the apex court published in 1996(9) Judgment Today on page 638. The commandant of C.O.D. Cheoki sought the advise of Director General of Ordnance advise of the Standing Counsel of the Central Services and in its absence took/Government in the High Court and candidates sponsored by Employment Exchange were informed by a letter dated 03.02.97 to appear for interview and selection at 9 a.m. on 17.02.97. A notice regarding the interview and selection was also pasted on the notice board of C.O.D. Cheoki and advertisement was given in the newspapers as follows :-

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"Notice is hereby given that interview/selection for appointment of mazdoors in C.O.D. Cheoki, Allahabad will be held at 09.00 hrs on 17 February, 1997 at C.O.D., Allahabad. All candidates are required to be present for interview/selection at the above time/date at Byrd Gate, C.O.D. Cheoki, Allahabad, along with proof of age, passport sized photograph, certificate for reserve category, if applicable. Intimation has also been despatched by post to persons sponsored through employment exchange. Details have been displayed in notice board of C.O.D. Cheoki, Allahabad."

3. It appears that 49 candidates of general, 20 of Backward Classes and 13 of Scheduled Caste sent their applications although they were not sponsored by the Employment Exchange on account of notices displayed/issued on 08.02.97 and thereafter. The approval of the Commandant was obtained to consider the candidates of these candidates on 15.02.97 and of these approval for considering the candidature of seven candiates was obtained as late as on 17.02.97 morning. Of the unsponsored candidates 22 general, 6 Backward Classes and 3 Scheduled Caste Candidates reamined absent for unspecified reasons. It is significant that 8 unsponsored General Category candidates, 2 unsponsored Backward Class Candidates and 3 unsponsored Scheduled Caste Candidates were included in the list of selected candidates. The panel of selected candidates and candidates on the reserve list were approved on 19.02.97. The candidates were called for completing formalities like furnishing character certificates and declaration form for police verification. All but three candidates were given their letters of appointment on 24.02.97 and the remaining three viz Shri Jai Chand, Shri Rajendra Kumar and Shri Mithilesh Kumar on 25.02.97. It is significant that all the candidates

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the applicants is not borne out by the file pertaining to selection produced by the respondents. The file shows that the procdure followed was for recruitment of candidates out of those who were sponsored by the Employment Exchange upto almost the middle of February of 1997. Yet in the interview/selection held on 17.02.97 some candidates who were not sponsored by Employment Exchange but had applied directly were considered. It is true that the judgment of the apex court requiring candidates from open market also to be given opportunity for selection along with the candidates of employment exchange in Excise Superintendent Malakapatnam Vs. K.B.N. Vishweshwar Rao & Ors, 1996 AIR SCW 3979 had been brought to their notice. But the letter sent by Respondent no. 2 to Respondent no. 1 by fax on 23.01.97 seeking guidance had been replied by the respondent no. 1 on 25.01.97 asking Respondent no. 2 to follow existing instructions as the matter of revising them was under consideration and no decision for their revision had been taken Yet due to some misconception generated by another letter of an advocate one Shri R.K. Srivastava, Respondent no. 2 allowed a few candidates not sponsored by Employment Exchange but coming directly to the Respondent no. 2 to be considered by his orders dated 15.02.97. The file of selection shows that seven candidates who had applied on 17.02.97 were also allowed to be considered by Respondent no. 2. Five of these namely Shri Sudhir Kumar , Shri Manoj Kumar Rai, Shri Sudhir Kumar Tiwari, Shri Raj Kumar, and Shri Nagender Singh were general category candidates and two namely Shri Ashok Kumar and Shri Chote Lal belonged to the Scheduled Caste. It is significant that out of these seven candidates three found place in the respective lists of selected candidates and two in their respective panels. There was another candidate Shri Rajesh Kumar S/o Shri Jawahar Lal who was sponsored

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should be allowed to continue ~~on the~~ on the posts for which they had been selected and their appointment orders were issued. As we have seen in the last paragraph, selection of six out of eight non-Sponsored candidates allowed to appear in general and scheduled caste categories on 17.02.97 is a statistically significant fact which requires further investigation on part of Respondent no. 1. Another curious feature is mentioning the name of candidates in alphabetical order in the list of selected candidates and in order of merit in the reserve panel making it appear that list of selected candidates is also drawn on the basis of merit. However, no directions are necessary on these issues because the inclusion of candidates not sponsored by Employment Exchange and not allowed to come through an advertisement in the mass media for the purpose but in a manner which is popularly called back door entry is itself sufficient to vitiate the selection. The contention of applicants in O.A. 382 of 1997 can, therefore, not be accepted. It is the settled law that if a selection is vitiated, the entire selection has to be cancelled as saving a part of it would be bad in law. The apex court has squarely laid down this law in Asha Kaul & Others Vs. State of J & K & Ors, (1993) 24 ATC 576, and in Ashwani Kumar & others Vs. State of Bihar & Others, JT 1997 (1) SC 243.

7. The applicants in O.A. 382 and 383 of 1997 have contended that recruitment was ordered to be made from amongst candidates sposored by the Employment Exchange and it was perfectly in order and consistent with the law laid down by the apex court. The learned counsel for the applicant has referred to the judgment of the apex court in Union of India Vs. N. Hargopal AIR 1987 SC 1227, and in Arun Tiwari & others Vs Zila Mansavi Shikshak Sangh & Others, AIR 1998 SC 331. They have also contended that the recruitment should be ~~confirmed~~ confined to

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to sponsored by Employment Exchange in case the bench decides that selection should be held again. As against this the applicants in all other O.A.'s have mentioned that Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, exempts vacancies in any employment to do unskilled office work under section 3 of the Act. They have in addition contended that the law on this subject has been laid down in Excise Superintendent, Malkapatnam Vs. K.B.N. Vishweswar Rao & others, 1996 AIR SCW 3979, Therefore, the inclusion of candidates not sponsored by Employment Exchange in interview /selection held on 17.02.97 was in order. We have carefully ~~co~~ considered these points of view and have expressed our views on the issue earlier. However, it is necessary to settle this specific controversy in this case. The current law on this issue is contained in the larger bench judgment of the apex court in the case of Excise Superintendent, Malkapatnam (supra) It takes into view the ratio of the case of Union of India Vs. Hargopal (Supra) and lays down:-

> "Better view appears to be that it should be mandatory for the requisitioning authority/establishments to intimate the employment exchange, and the employment exchange should sponsor the names of the candidates to the requisitioning Department for selection strictly according to seniority and reservation as per requisition. In addition,the appropriate Departments or undertaking or establishment should call for the names by publication in the news papers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins, and then consider the cases of all the candidates who have applied."

8. We have seen that the respondents have not followed this ratio. The requirement of wide publicity contained in this

has not been adhered to by the respondents. The notice given in the newspapers on 10th and 11th of Feburary, 1997, is different in language from one adopted in notice pasted in the notice board of the Depot on 08.02.97. If any invitation to employment seekers can be read by wide interpretation of any of the notices, it can only be in the notice pasted in the notice board of the Depot on 08.02.97 and this notice could have been seen only by a very small number of persons and, therefore, it resulted in such a low response. The respondent no. 2 neither followed the directions of his department nor the ratio of the above judgment properly and adopted a half hearted procedure which neither followed the official policy nor the ratio of the apex court judgment.

9. The applicants have contended that they had been appointed and had joined on their jobs on the same day and had worked for sixteen to seventeen days before the selection was cancelled. The respondents in their reply to O.A. 275 of 1997 have stated that the applicant Subhash Chand had joined duty on 24.02.97 and that his services were terminated in March 1997 because his name had not been sponsored by the Employment Exchange. In case of other applicants in other O.A.'s the respondents have not made such an ~~confession~~ admission. In response to copy of the letter permitting all the 26 applicants entry into the Depot as newly recruited mazdoors in O.A. 340 of 1997 (Annexure A 13) the respondents have mentioned in their counter reply that the letter was erroneously issued and that an amendment to it was issued. But this amendment has not been annexed to the counter reply nor is it flagged as any document to be seen by us as a part of record of selection. The applicants have claimed that they made a representation that they were experiencing difficulties in entering because they had neither been issued a temporary or permanent pass

in Annexure A-VII to O.A. 348 of 1997 but the respondents have denied. The applicants have claimed that they were entitled to salary for the period of their work and afterwards. The applicant in O.A. 275 of 1997 has produced a copy of the letter dated 29.04.97 written by respondent no. 2 to respondent no. 1 (Annexure RA-I) in which the period of service rendered by 23 applicants is mentioned to be from 24.02.97 to 10.03.97 and by 3 applicants to be from 25.02.97 to 10.03.97. The claim of the applicant that they had put in more than half a month's work deserves to be enquired into by Respondent no. 1. The applicants can not be allowed salary for the period after the cancellation of selection because they have not been working after that but they do have the right to receive salary for the period they have worked prior to cancellation. As far as the period after cancellation, there is a case for awarding compensation to the applicant as the cancellation of selection was mainly due to wrong procedure followed by Respondent no. 2 in selection.

10. It has been claimed by the applicant that since they had been appointed, their services could not have been terminated without a show cause notice. They have in this connection cited the authority of Jarnail Singh & Others Vs. State of Punjab & others, 1986 SCC (L&S) 524, Shrawan Kumar Jha & Others Vs. State of Bihar & others, AIR 1990 SC 309 and Director General of Police and others Vs. Mrityunjoy Sarkar & others, JT 1996 (4) SC 241. The apex court has, however, in its judgments in Union of Teritory of Chandigarh Vs. Dilbagh Singh & others AIR 1993 SC 796, Biswa Ranjan Sahoo & Ors Vs. Sushanta Kumar Dinda & Others JT 1996 (6) SC 515 and Ashwani Kumar & Ors Vs. State of Bihar & Ors, JT 1997(1) SC 243 which are all larger bench judgments have held that cases of

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irregular appointments due to defect in selection which affect the mass of candidates have to be dealt with in different manner. In the first two of the cases cited above, the requirement of show cause notice were done away with because the irregularities were either resulting from the action of the selections or due to a collusion between candidates and selectors and affected the entire mass of candiates. In the last of these cases, it has been held that when appointments of certain persons suffer from a flaw in procedural exercise, they should not be regularised if the intial entry was totally illegal or in blatant disregard of all the rules and regulations governing such recruitment. (para 14 of the judgment). The respondents have also cited the Amlapuram Municipal Council & Aur Vs. U. Simhadri JT 1996 (7) SC 468 in which it has been held that where selection has been done without following full procedure of selection, the selections were held to be irregular and not enforceable. The case before us is one in which the employment seekers not sponsored by Employment Exchange have not been given opportunity as per directions of apex court with regard to publicity in Excise Superintendent Malkapatnam's case (Supra).

11. The learned counsel for the applicants in O.A. 383 of 1997 has mentioned that the applicants were placed on respective reserve panels after interview/selection held on 17.02.97 and all the applicants had been sponsored by the Employment Exchange. It is his contention that these candidates formed a separate class and their selection did not violate the stipulation made by Respondent no. 1 at the time of releasing 26 vacancies that selection should be made from out of candidates sponsored by the Employment

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Exchange. Since the Selection Board had been properly consituted and there are no allegations of irregularity against the Selection Board, the entire selection can not be cancelled. This issue has already been dealt with in this order and we have held that it would not be legal to save a part of the selection or a part of the select list once it is concluded that another part of the selection has not been conducted according to rules and instructions of the authorities. Secondly, the applicants in this O.A. are those placed in the reserve panel and once selection is cancelled, and such cancellation does not suffer from arbitrariness, their challenge to the cancellation cannot succeed. The apex court has held in Shankarsan B Dash Vs. Union of India AIR 1991 SC 1612 that no indefeasible right to appointment accrues to the selected candidates.

12. In the light of above conclusions, we do not allow the cancellation of notice dated 11.03.97. It is true that the Respondent no.1 cancelled the selection on the ground that Respondent no. 2 did not confine to candidates selection sponsored by Employment Exchange. We on the other hand find that the selection of 17.02.97 has to be cancelled because Respondent no. 2 did not act in accordance with the procedure laid down by the apex court in the case of Excise Superintendent Malkapatnam. Therefore, cancellation was in order albeit not for reasons given by Respondent no. 1. We hold that the applicants are not entitled to be allowed to continue working after the cancellation of their selection or be paid salary after that date. The prayer of the applicants that notice dated 18.03.97 for holding interview of the candidates sponsored by the Employment Exchange on 02.04.97 be quashed is allowed for the reason that the respondents did not adopt proper procedure in inviting applicantions from candidates in open market.

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13. We direct that in all future recruitments the Respondents shall adopt the procedure of inviting applications /candidature from Employment Exchange as well as open market by giving wide publicity to the latter through multiple mass media channels as laid down in the case of Excise Superintendent Malkapatnam. As far as the recruitment for 26 posts is concerned, it shall be conducted and completed within six months from the date of communication from the applicants of a copy of this order in accordance with above procedure but the candidates already included in selection held on 17.2.97 shall also be considered along with others and if any candidate who was invited for selection dated 17.02.97 has become overage, he shall be given age relaxation for eligibility in the selection ~~in the selection~~ to be held by Respondent no. 2. The Respondents are also directed to conduct an enquiry as to the period for which the applicants worked and shall pay them salary for the period of their work within three months from the date of communication of this order by the applicants. The applicants shall be paid compensation of Rs. three thousand each alongwith cost of the application amounting to Rs. six hundred and fifty in each O.A. which shall be apportioned in equal amount to each applicant in that O.A. within two months of the date of communication of this order.

14. All the seven applications stand disposed of in terms of the above order.