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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.107 of 1987.

Date of decision : December 8, 1989.

1. Parsuram Sutar, aged about 30 years, son of Purastam Sutar, Vill.Jhinkiri, P.O.Barikul, P.S.Binjharpur, Dist-Cuttack.
2. Jaladhar Mohapatra, aged about 29 years, son of Ramesh Chandra Mohapatra, vill-Abalpur, P.O.Praharajpur, Dist-Puri.
3. Subash Behera, son of Raghunath Behera, aged about 26 years, village/P.O.Nuapali, Bhubaneswar-12.
4. Harihar Sahu, aged about 28 years, S/o Kirtan Sahoo, At-Brajamohanpur, P.O. Ramachandi, Dist.Puri.
5. Sisir Kumar Swain, aged about 28 years, son of Rabindra Kumar Swain, village-Jhinkiri, P.O.Barikul, P.S.Binjharpur, Dist-Cuttack.
6. Sanatan Mallick, aged about 28 years, son of Bhagaban Mallick, village-Baldipada, P.O. Madhyasasan, Dist-Cuttack.
7. Narendra Kumar Sahu, aged about 29 years, son of Jogi Sahu, At-Balisahi, P.O.Bhubaneswar-2, P.S.Old Town Bhubaneswar, Dist.Puri.
8. Bikei Charan Behera, aged about 29 years, son of Panchanan Behera, vill.Dajpur, P.O.Andhrarua, P.S.Bhubaneswar-2, Dist.Puri.
9. Hrusikesh Bhoi, son of Gunei Bhoi, aged about 30 years, vill-Ranipada, P.O.Biridi Road, Dist.Cuttack.

... Applicants.

versus

1. Union of India, represented through Postmaster General, Orissa Circle, Bhubaneswar-1.
2. Assistant Postmaster General, (Recruitment), Orissa Circle, Bhubaneswar-1, Pin-751001.
3. Manager, Postal Printing Press, Mancheswar Industrial Estate, Bhubaneswar-10.

4. Assistant Manager(Admn.),
Postal Printing Press,
Mancheswar Industrial Estate,
Bhubaneswar-10.
5. Nizamuddin Khan
6. Siba Prasad Mohanty.
7. Tapan Kumar Samantray.
8. Ashok Kumar Barik
9. Arakhit Muduli
10. Arjun Bhoi
11. Abhimanyu Tripathy
12. Jagannath Panda
13. Satish Chandra Pradhan

Sl.Nos.5 to 13 are Group 'D'
C/o Manager,
Postal Printing Press,
Mancheswar Industrial Estate,
Bhubaneswar-10.

... Respondents.

For the applicants ... M/s.A.C.Mohanty,
S.K.Ray,
Mr.Deepak Misra, Advocates.

For the respondents 1 to 4... Mr.Ganeswar Rath,
Sr. Standing Counsel (Central)

For the respondents 5 to 13 ... Mr.D.P.Dhalsamanta,
Advocate .

C O R A M:

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? NO
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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27J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, 9 applicants in this case have put in 1200 to 2000 days of continuous work as casual mazdoors under the Manager, Postal Printing Press, Mancheswar Industrial Estate, Bhubaneswar. They were called to an interview held in March, 1987 to select candidates for regular appointment as Group 'D' employees in the said Postal Printing Press. This order of the Department has been challenged by the applicants in this case on the ground that it is violative of the instructions issued by the Department, a copy of which is at Annexure-1. The relief sought ~~for~~ by the applicants is that the order appointing Respondents 5 to 13 should be set aside.

2. The respondents in their counter have maintained that no illegality has been committed by the Department in offering appointment to Respondents 5 to 13 inasmuch as they have all been selected through the process of an interview and the applicants have also been afforded equal opportunities with Respondent Nos. 5 to 13 and as such there is no case for setting aside the order of the Department.

3. We have heard Mr. A.C. Mohanty, learned counsel for the applicant and Mr. Ganeswar Rath, learned counsel appearing for Respondents 1 to 4 and perused the relevant papers. Mr. Mohanty drew our pointed attention to Annexure-1, particularly to paragraphs 2 and 5. Paragraph 2 reads as follows :

" It is observed that some of the Circles/Distss were not considering eligible casual mazdoors of constructions/maintenance parties for Group-D posts in administrative offices and exchanges, if eligible casual mazdoors working in those offices/exchanges. They were resorting

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to nomination of outsiders from Employment Exchanges, although other eligible casual mazdoors working in constructions and Maintenance parties duly nominated from Employment Exchange were available. This is not proper. In this connection attention is invited to this office letter No.269-5/78-STN(Pt) dated 10.12.79 inviting attention to the existing orders vide 204/24/63-STB dated 15.9.65 which provide that if eligible casual mazdoors from office/estt were not available, eligible casual mazdoors working in constructions/maintenance parties should be considered. If this is followed, there will be hardly any need to resort to the nomination of raw outsiders from the Employment Exchange. "

Paragraph 5 reads as follows:

" It has further been decided that if at all resort to Employment Exchange for raw outsiders have to be resorted to, then prior approval of this office have to be obtained after referring the matter to this office with full facts and justification under the personal signature of the Director/Dy.G.M.concerned. "

The interview , according to Mr.Mohanty was not confined to ^{only} ~~all~~ eligible casual mazdoors but it was thrown open to outsiders ^{sponsored} ~~requisitioned~~ by the Employment Exchange. No prior approval of the Director General, Posts has been obtained as required in paragraph 5 of the circular, ^{referred to above.} Since the interview was done in violation of these instructions it is abinitio void and even though they have appeared in the interview as required by the Department, it cannot be set down to their disadvantage as interview itself was ab initio void. Mr.Rath, on the other hand vehemently argued that since the applicants have appeared in the interview and they have been given equal opportunities with the respondents 5 to 13 and since there is no discrimination against them, they cannot say that any injustice has been done to them and as they did not have sufficient merit to qualify in the interview, they have not been selected for regular appointment to Group D service.

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Mr. Dhalsamant adopted the argument of Mr. Rath. Mr. Rath very strenuously contended that on reading paragraph 5 of the aforesaid letter it would be found that mere working for a long period cannot be the sole criterion to judge the suitability or otherwise of a person for being appointed but we regret our inability to accept this contention in view of the language used in that very paragraph. On reading the paragraph it would be found that the eligibility referred to therein is, infact, based on the length of service rendered. The order of preference has been considered again. It is pointed out that if eligible casual mazdoors (those who have served 240 days in each year for two years) are not available in the office/establishments eligible casual mazdoors working in construction/maintenance parties should be considered. This would go to show that such of the persons who had completed 240 days in each of the two years preceding the date when they were considered for appointment would be the real criterion to judge their eligibility. Though a general denial to the charges mentioned in paragraph 6 of the application has been made but no details have been mentioned in the counter. The applicant Nos. 1 and 2 have claimed eligibility from the year 1980-81 and others are working from 1985 as regular Mazdoors vide paragraph 5 of the counter. From paragraph 6 of the application it would also be apparent that within 5 years preceding the date of consideration at least applicant No. 1 had put in 240 days of service in each year.

4. After having heard learned counsel for both sides and on careful perusal of the documents particularly, letter of the Director General, P & T. bearing No. 269-86/78-STN(Part) dated

R. S. S.

5.1.1980 we have come to the irresistible conclusion that the interview to which the outsiders were called was without prior approval of the competent authority and was in flagrant violation of the aforesaid instructions and as such we hold the selection and appointment made by the Department as invalid and we do hereby direct the Department to hold further selection as per the instructions contained in Annexure-1. The selection should be finalised within three months from the date of receipt of a copy of this judgment.

5. This application is accordingly disposed of leaving the parties to bear their own costs.

M. S. Sengupta
.....
Vice-Chairman 8/12/89

N. SENGUPTA, MEMBER (J),

I agree.

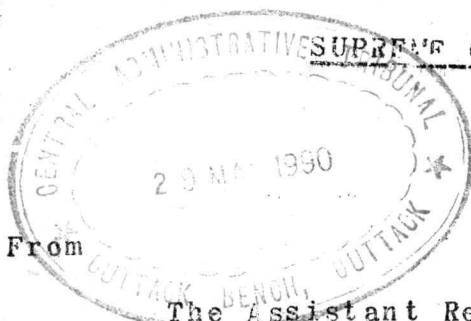


N. Sengupta
.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 8, 1989/Saranghi.

OA 107/87

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SUPREME COURT OF INDIA

D. No. 153/90 AC/XI-A

Dated, the 21st May, 1990

From

The Assistant Registrar,
Supreme Court of India,
New Delhi.

1.

The Registrar,
High Court of

Central Delmn. Tribunal,
Cuttack, Orissa.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 1564/90
(Petition under Article 136(1) of the Constitution of India
for Special Leave to appeal to the Supreme Court from the
judgment and order dated the 8th Dec. 1989 of the High
Court of C.A.T. at Orissa
in C.A. No. 107/87).

Nizamuddin Khan aor

..Petitioner(s)

-versus.

Union of India aor

...Respondent(s)

Sir,

I am to inform you that the Petition(s) above-mentioned for Special Leave to appeal to this Court was/were filed on behalf of the petitioner(s) above-named from the judgment and order of the High Court noted above and that the same was/were dismissed by this Court on the 7th day of Feb., 1990. Some observation

A certified copy of the record of proceedings dated 7th Feb. 1990 in the matter is enclosed herewith for your information and record.

Yours faithfully,

ASSISTANT REGISTRAR

Shakti

24. No. 158
24.29.5.90

Item No. 10

Serial No. 3

Section 20

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SLA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition (s) For Special Leave To Appeal (Civil/Criminal) No. (s) 1564 of 1990

(From the Judgment and order dated 9.12.89 of the Hon'ble Central Administrative Tribunal, Cuttack Bench in O.A. No. 107/1987)

Nizamuddin Khan & Ors.

...PETITIONER(S)

VERSUS

Union of India & Ors.
(With appln. for ex-parte stay)

251460 RESPONDENT(S)

Date: 7.2.90 : This/These petition (s) was/were called on for hearing today

CORAM :

Hon'ble Mr. Justice KN MENON
Hon'ble Mr. Justice TK THOMAS
Hon'ble Mr. Justice NM KASLIWAL

For the Petitioners: Mr. P.N. Mishra, Adv.

For the Respondents:

22-5-1990

UPON having read the petition and the following
ORDER

It is stated that in view of the order of the
tribunal, the petitioner will be removed from
the service. We do not agree with this submission
as the tribunal has not passed any such direction.
Accordingly, the Special Leave Petition is dismissed.

J. L. JAIN
COURT MASTER

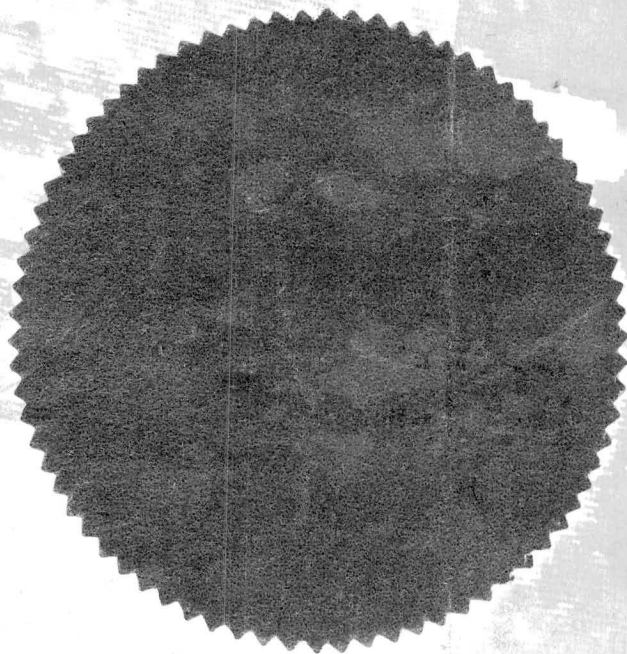
Pl. send a copy
to the Tribunal
KDS
12/2

12/2/1990

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Ref.

M. Jha
2015/10