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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 355 OF 1989

Date of decision: April, 19, 1991

Prahalad Mohanty

: Applicant  
a

-Versus-

Union of India and others

: Respondents.

For the applicant

: M/s. B. Nayak, J. Pradhan,  
D. Behera, Advocates.

For the Respondents

: Mr. Ganeswar Rath, Sr. Standing  
Counsel (Central).

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C O R A M:

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

AND

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

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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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J U D G M E N T

B.R.PATEL, VICE\_CHAIRMAN: The facts, briefly mentioned are that the name of the applicant was sponsored by the Local Employment Exchange for selection for the post of Fireman Grade-II under the Director, Interim Test Range, R&D Organisation, Ministry of Defence, Government of India, District: Balasore. He was selected for the post and was informed vide Annexure-2 dated 22nd April, 1988 that he should fill up the two sets of attestation forms and return the same for verification of his Character and antecedents. The grievance of the applicant is that even after he had filled up the attestation forms he was not given the order of appointment as Fireman Grade-II, instead he was given the work of a Casual Helper on 5.12.1988 for a period not exceeding 60 days. His casual work terminated from 25th January, 1989. He was again engaged as a casual helper vide order dated 9th February, 1989 for a period not exceeding 89 days with effect from 30th January, 1989. This procedure for employment and termination of employment went on till 12th July, 1989. When he was finally discharged from his duty. In the meantime Respondent Nos. 3 and 4 have been selected on 9.5.1989 and appointed on 7.8.1989 and 5.6.1989 respectively. He (the applicant) has approached the Tribunal to direct the Respondents to appoint him as Fireman, Grade-II to the post for which he was

*B.R. Patel*

selected as per Annexure-2 with effect from the date of receipt of the report of verification of character and antecedents.

2. The Respondents No. 1 and 2 have maintained in their counter affidavit that no irregularity has been committed in not appointing the applicant and in appointing Respondent Nos. 3 and 4. They have explained that they had written to various employment exchanges to sponsor suitable candidates against twelve vacancies which were available in the year 1988. Out of the vacancies for which recruitment was to take place, three posts <sup>were</sup> reserved for SC, four for ST, ~~two~~ Two for Ex-serviceman and three vacancies were ~~form~~ unreserved category. The applicant belongs to unreserved category. A recruitment board was duly constituted under the Presidentship of Wing Com. G.C. Mohanty, CAO with five members. Assistance of Reserve Police Testing Team was taken for assessment of Physical stamina test(s) of the candidates. A copy of the findings and recommendations of the Board of officers ITR Balasore held on 14th July, 1988 is at Annexure-A to the counter affidavit. As per the minutes of the aforesaid meeting 31 candidates <sup>who</sup> succeeded in the physical test were interviewed and for the general category five persons were selected out of which two were kept in the standby list. The name of the applicant occurs as No. 2 in this list. The Respondents

By ~~Signature~~

*Signature*

have explained that immediately after the interview, the selected candidates both on the main and standby lists were informed that in case the candidates in the main list do not turn up, the candidates on standby list would be taken in for appointment. They have further stated that while the verification of character and antecedents of all the selected candidates were under progress, the operational requirement of range readiness for the 'AGNI' Launch necessitated immediate employment of casual helpers for the pre and post launch activities. They have further explained that in order to avoid the procedural delay, they called up the candidates in the standby list to work as casual helper. According to the Respondents after the Agni launch there was no other pre and post launch work existing in the department to engage casual helpers, further that there is no vacancy in sanctioned strength to employ the applicant as casual labourer.

3. In regard to the selection and appointment of Respondent Nos. 3 and 4 the Respondents have explained in their counter that a meeting of second recruitment board was held on 9.5.1989 vide Annexure-D to recruit Fireman Grade-II against two vacancies for which the desirable qualification fixed was three years experience in the driving of special vehicles like Fire Tender/Crash Tender/Bulldozer in order to meet immediately the operational requirement of the Range

*Bommalu*

activities; prior to the 'AGNI'-Launch. Out of these two vacancies one was reserved for ST and the other was for General category. The board of officers under the Chairmanship of Col. R.K. Sahoo (there were three members in the board) conducted the necessary tests and selected Respondent No. 3, Sk. Habibullah, against General category and Shri Niranjan Behera, Respondent No. 4 who was a member of SC. The Respondents have further maintained that for the vacancies for which selection was made vide Annexure-2 there was no desirable qualification prescribed.

4. The Respondent Nos. 3 and 4 have not filed any counter.

5. We have gone through the minutes of the Board of officers, copy of which are Annexure-A and Annexure-D to the counter. We have found that the name of the applicant has occurred in the standby list under general category. Three persons have been included in the main list and these persons have ~~xxxx~~ secured more marks than the applicant. In fact four persons have secured more marks than the applicant as we have found in the mark sheet enclosed to the minutes (Annexure -A). The marks secured by these persons are indicated below:

1) Shri Sk. Sali	: 50
2) Shri Haribol Das	: 45
3) Shri Prafulla Kumar Mohakud	: 45

(These three persons have been included in the main list)

*Banshi*

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6.

Dinabandhu Barik : 39 marks; and Brahallad Mohanty: 36 (These two persons are included in the standby list). We have absolutely no doubt in our mind that the case of the applicant has been duly considered for the post of Fire-Man Grade-II for which the selection was made vide minutes of the meeting dated 14th July, 1988 (Annexure-A). This selection has been intimated to him vide letter dated 22nd July, 1988 vide Annexure-2. As he was placed in the stand <sup>he</sup>by list as the second candidate he could not have been appointed to a post of Fireman Grade-II unless two of the candidates placed above him by virtue of the marks secured have declined to accept the offer of appointment as Fireman Grade-II. Mr. Ganeswar Rath <sup>Standing</sup> the learned Counsel for the Respondents has informed us that none of the candidates placed above the applicant have declined the offer of appointment as Fireman Grade-II. In view of this we are unable to accept the plea of Mr. B. Nayak, the learned Counsel for the applicant that there has been any injustice done to the applicant so far as the selection for Fireman Grade-II dated 14th July, 1988 is concerned which was intimated to the applicant vide Annexure-2.

6. As has been mentioned above, the selection of candidates for the two subsequent vacancies of Fireman Grade-II was done by Board of Officers which conducted the selection on 9th May, 1989, a copy of their findings is enclosed to Annexure D to the

*B. Nayak*

to the counter . There were 74 candidates sponsored by the various employment exchanges within the district of Balasore . The essential qualification for selection were (i) Must have passed middle school examination or possess equivalent educational qualifications; (ii) Must be physically fit to withstand strenuous Physical exercise as required; (iii) Desirable: Must have three years' experience in driving specialist vehicles like Fire Tender/Crash Tender/Bulldozer and possess a valid driving licence. The physical fitness in regard to various parameters had been indicated. Out of 50 candidates who appeared for interview 38 candidates were screened out as they did not have the driving licence. Only two candidates qualified in the practical driving test (Bus). Finally they have selected only two candidates who are Respondent No.3 and 4 in this case. As has been mentioned above, the second post was reserved for ST candidates but Board of officers found that none of the ST candidates had the driving licence. In paragraph 10 of their minutes the board of officers have mentioned as follows:

"10. This SC candidate found suitable can be taken in against one post of ST vacancy as per Govt. of India letter Department of Pers. and A.R., OM No.10/41/73-Estt.(SCT) dated 20th July, 1974, as amended by OM No.36021/7/

*Pranab*

75-Estt(SCT) dated 25th February, 1976; Page 199 Swamy's Estb. & Admin Manual; which lays down that exchange of reservation between SC(s) and ST(s) is permissible in the third recruitment year. This is the third recruitment year in case of Fireman Grade-II".

As no ST candidate was found suitable and as the post has been carried forward to three recruitment years the competent authority have rightly given this reserve post to a ST candidate. In view of this we cannot take any exception to the action taken by the Respondents. In the result the application fails. There would be no order as to costs.

*[Signature]* 17.4.76  
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MEMBER (JUDICIAL)

*[Signature]* 19.4.76  
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VICE CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench: Cuttack. K. Mohanty

