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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 481 OF 1995
Cuttack this the 16th day of November /2000

Lingaraj Samal & Another ...

Applicant(s)

-versus-

Union of India & Others ...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 47
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 48

S. Somnath S. Sum
(SOMNATH SUM)
VICE-CHAIRMAN
16/11/2000

16-11-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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ORIGINAL APPLICATION NO.481 OF 1995
Cuttack this the 16th day of November/2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

1. Shri Lingaraj Samal, S/o. Late Narasingh Samal, Observer Grade-II, Eastern Rivers Division, Central Water Commission, Plot No. A-13, & 14, Sahid Nagar, PO: Vani Vihar, Bhubaneswar-4
2. Sri Gopinath Pradhan, S/o. Late Anadi Charan Pradhan Observer Grade - II, Eastern Rivers Division, Divisional Laboratory, Plot No:655, Sahid Nagar, Bhubaneswar-751007

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Applicants

By the Advocates

M/s.Ganeswar Rath
S.N.Misra
A.K.Panda

-VERSUS-

1. Union of India represented by its Chairman, Central Water Commission, Sewa Bhawan, R.K.Puram New Delhi-110066
2. Superintending Engineer, Hydrological Observations Circle, 25-R, Behind Maharshi College of Natural Law, P.O :Sahid Nagar, Bhubaneswar-751007
3. Executive Engineer, Eastern Rivers Division, Central Water Commission, Plot No: A-13 & 14, Sahid Nagar, PO: Vani Vihar, Bhubaneswar-4

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Respondents

By the Advocates

Mr.A.Routray
Addl. Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): The two applicants, who are Observers Grade-II of Eastern Rivers Division under the Central Water Commission at Bhubaneswar pray for their appointment as Research Assistants against vacant post at Bhubaneswar; and for declaring proceedings of the Selection Committee as perverse, arbitrary and malafide and for quashing Annexures-5 and 6 dated 7.7.1975, that declaring these applicants are not suitable for the post of Research Assistants.

2. Facts not in controversy are as follows :

The applicants having the necessary qualifications joined as Junior Observers at different periods with expectation of promotional avenues to the posts of Research Assistants. However, in the year 1982, the post of Research Assistant was made Staff Selection posts ^{by direct recruitment} as a result of which promotional avenues of the applicant were blocked. The applicants then filed Original Application No. 293/89 before this Tribunal challenging rules/order making all the posts of Research Assistants available to direct recruits. That Original Application was disposed of on 21.12.1991 (Annexure-1) directing the Department to consider the applicants for the post of Research Assistants, and if found suitable to give promotion, keeping in view the higher qualifications the applicants possess. Thereafter the applicants preferred Original Application No. 346/93 for implementation of the earlier judgment of the Tribunal. On contest this Application was disposed of on 10.5.1995 (Annexure-2) with a direction to the Department that they should consider applicants' promotion, if they are found suitable to the posts of Research Assistants by initiating proceedings in that behalf within two weeks from the date of that order and complete the entire process within 90 days and till then to keep two posts out of the existing vacancies. Pursuant to this direction of the Tribunal, a Selection Committee was constituted and the two applicants were directed to appear in the Office of the Chief Engineer, Central Water Commission, Bhubaneswar on 21.6.1995 with all their original certificates and testimonials in support of their qualifications. On 21.6.1995, the Selection Committee, after considering them did not find suitable the applicants to hold the post of Research Assistants and the proceeding was communicated to the

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applicants under Annexures-5 and 6 dated 7.7.1995.

3 : The case of the applicants is that after the pronouncement of the order in O.A.346/93, they met Shri K.S. Khandpur, Superintending Engineer, Hydrological Observations Circle, Central Water Commission, Bhubaneswar and requested him to consider the official process for their selection to the post of Research Assistants. Shri Khandpur replied, "do not think that you have won the case and you will be promoted as Research Assistants. A Selection Committee shall be constituted soon only to declare you unsuitable for the post of Research Assistants. Otherwise the Commission has to face a lot of administrative difficulties in entertaining cases/complaints/requests to promote other Observers to Research Assistants". The Selection Committee consisted of (1) Superintending Engineer, Krishna Circle, Hyderabad, (2) Executive Engineer, Mahanadi Division, Burla (3) Assistant Executive Engineer, Hydrological Observation Circle, Bhubaneswar, (4) Section Officer Central Water Commission, New Delhi and (5) Deputy Director, National Water Development Agency, Bhubaneswar, who is an officer other than the Central Water Commission. This Deputy Director, National Water Development Agency was a friend of Shri K.S. Khandpur, who promised to act as per his direction. Other Members of the Committee assured Shri Khandpur to act as per his direction. With this background and as an eye wash the Selection Committee was formed with the approval of Central Water Commission New Delhi. The post of Research Assistants being the selection posts, and this Tribunal having directed the Department to promote the applicants subject to their fitness, the applicants were entitled to be assessed on the basis of their ACRs, which

are very good/outstanding. Thus, according to applicants, even if the Selection Committee would award zero in *viva voce* test, then also they ~~would~~ be bound to be declared suitable in view of their past performance, while discharging the duties of Research Assistants, experience and A.C.Rs.

1. The Department in their counter take the stand that in the earlier Original Application this Tribunal did not quash the rule/order making the provisions for direct recruitment to the post of Research Assistants in spite of specific prayer to that effect. It is also not a fact that the Tribunal directed the Department to promote the applicants to the posts of Research Assistant just by their mere asking. What this Tribunal observed that the Department should consider the cases of the applicants for the post of Research Assistants and if found suitable they could be given promotions. It is strongly denied that the applicants approached Shri S.K.Khandpur and that Shri Khandpur told them that a Selection Committee would be constituted only to declare them unsuitable for the post and that one of the Members of the Committee hailing from National Water Development Agency is a friend of Shri Khandpur, who promised to act as per his direction. It is also denied in the counter that other Members of the Selection Committee assured Shri Khandpur to act as per his direction. In fact the Chairman of the Selection Committee, i.e., Shri O.K. Rao, Superintending Engineer, Hydrological Observation & Coordination Circle, Central Water Commission, Hyderabad is in no way subordinate to Shri Khandpur. Members of the Selection Committee had no occasion to act under the direction to influence the Meeting, but the assessment was done independently. After finding the

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the applicants unsuitable, they could not have recommended for their promotions. There was no malafide intention of the Committee to declare the applicants unsuitable.

3. No rejoinder has been filed.

4. We have heard Shri Ganeswar Rath, the learned counsel for the applicants and Shri A. Routray, the learned Additional Standing Counsel appearing for the Respondents. Also perused the records.

5. There is no dispute that in spite of specific prayer made in the Original Application 293/89 for quashing the rule/order providing the posts of Research Assistants for Direct Recruits, the Tribunal did not quash that order. On the other directed hand, the Department to consider the case of the applicants and to promote them as Research Assistants, if found suitable. This has also been reiterated in the Original Application No. 346/93. In other words, it does not mean that the Tribunal intended that the two applicants should be promoted automatically in view of their past experience through a formality of Selection Committee. Had it been so, the Tribunal would not have mentioned "if found suitable". In other words unless the Selection Committee in its discretion found the applicants suitable, the applicants could not have been promoted in normal course.

The sum and substance of the pleadings of the applicants is that the Selection Committee was constituted as per the choice of Shri K.S. Khandpur as an eye wash only to declare the applicants unsuitable and thus not only the Committee acted malafide but also the formation of the Committee is biased. In other words, according to applicants, the real culprit is Shri K.S. Khandpur, Superintending Engineer, Central Water

Commission, Bhubaneswar. Law is well settled that in case of allegation of malice or bias against a particular authority, the said authority should be impleaded even by name as Respondent. In this Application Shri K.S.Khandpur has not been impleaded as Respondent by name, as a result of which he had no opportunity to counter the allegation of malice against him. We are, therefore, not inclined to believe the version of the applicants that Shri Khandpur in advance told them that a Selection Committee would be constituted only to declare them unsuitable for the post of Research Assistants and that the Members of the Committee were appointed at his choice and acted on his direction. It is true that the applicants pleaded that their ACR gradings are very good/outstanding. No reliance can be placed on this averment, because A.C.R. gradings being confidential in nature, the employees concerned are not expected to know the same unless adverse entries, if any, are communicated to them. It may be, the applicants might not have been communicated with adverse entries in their A.C.Rs, but it does not necessarily mean that they have very good/outstanding gradings throughout.

The fact remains, the Selection Committee after perusal of the records of the applicants found them unsuitable for promotion to the posts of Research Assistant. The applicants' attempt to establish the findings of the Selection Committee are tainted with malice, as discussed above has not been accepted by us. Since the applicants were not found suitable, the Department was not at all unjustified to ^{in my opinion} ~~promote~~ them to the post of Research Assistants.

9. In the result, we do not see any merit in this

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 Application which is accordingly dismissed, but without any order as to costs.

Interim order dated 24.8.1995 directing the Respondents to keep two posts of Research Assistant vacant stands vacated.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
 B.K.SAHOO



16-11-2006
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)

B.K.SAHOO//