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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 482 OF 1995.

Cuttack, this the 16th day of November, 1999.

S.S. MOHIDDIN & OTHERS.

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APPLICANTS

- VERSUS -

UNION OF INDIA & OTHERS.

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RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? *Yes*.
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO*.

(G. NARASIMHAM)
MEMBER (JUDICIAL)



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 482 OF 1995.

Cuttack, this the 16th day of November, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

&

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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1. Sri S.S. Mohiddin, aged about 20 years,
S/o. M.D. Khasen, C/o. Md. Mohiddin,
N.A.D., Sunabeda-4, Dist. Koraput;
2. Madhukhora,
At-Chikapur, Po. Sunabeda,
Dist. Koraput.
3. Shishira Kumar Chetty, 20 years,
S/o. Ujala Chetty, At. Kuntesh,
Po. Murkar, Dist. Koraput.
4. Laxmikanta Mohakud, 25 years,
S/o. Gopinath Moharkuda,
Gr. No. P/29/4, NAD, Sunabeda,
Dist. Koraput.
5. S. Shaktivel Das, 24 years,
S/o. Subramania Das,
At. Ganjam Colony,
Po. Sunabeda-3, Dist. Koraput.
6. Subash Chandra Bhatra, 30 years,
S/o. late Daypatra Bhata, At. Jadaguda,
Po./Via. Sunabeda, Dist. Koraput.
7. Pabitra Nayak, 23 years,
S/o. Brundaban Nayak,
NAD, Sunabeda, Dist. Koraput.
8. Kanhu Charan Behera, 23 years,
S/o. Kubera Behera, NAD,
Sunabeda-4, Dist. Koraput.
9. Surendra Bhatra, aged about 25 years,
S/o. Anadi Bhatra, Rajib Colony,
Sunabeda, Dist. Koraput.



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10. Bandhu Jani, 20 years,
S/o. Madanjani, At. Balada,
Po. Dumuriput, Dist. Koraput.
11. Madhu Jani, 19 years,
S/o. Braja Jani, At. Balada,
Po. Dumuriput, Dist. Koraput.
12. Gangadhar Nayak, 23 years,
S/o. Ranka Nidhi Nayak,
C/o. Rajendra Nayak, NAD,
Sunabeda, Koraput.
13. Krushna Chandra Behera, 29 years,
S/o. Mulia Behera,
Qr. No. P/42/5, NAD Colony,
Sunabeda-4, Dist. Koraput.
14. Rajendra Kumar Senapati, 27 years,
S/o. Mchan Senapati, Qr. No. U-45,
HAL, Sunabeda-2, Dist. Koraput.
15. Basava Srinibas, 27 years,
S/o. B. N. Murty, NAD, Sunabeda-4,
Dist. Koraput.
16. Ajay Kumar Mangaraj, 23 years,
S/o. M. C. Mangaraj, NAD Sunabeda-4,
Dist. Koraput.
17. Gaganbihari Sethy, aged about 21 years,
S/o. Maguni Charan Sethy,
C/o. N. K. Sethy, L. D. C., At/Po. NAD Colony,
Sunabeda-2, Koraput.
18. Deepankar Sen, 22 years,
S/o. late Badal Kanti Sen,
Qr. No. R-35, sector-7,
Sunabeda-1, Dist. Koraput.
19. Pradipta Kumar Pati, 25 years,
S/o. Keshab Chandra Pati,
C/o. sadananda Pati,
At/Po. Sunabeda, Dist. Koraput.
20. Amiya Kumar Behera, 21 years,
S/o. Santi Chandra Behera, NAD
Sunabeda-4, Dist. Koraput.
21. Mahesh Kumar Das, 22 years,
S/o. Bhagaban Das, NAD Colony,
Sunabeda-4, Dist. Koraput.

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APPLICANTS

By legal practitioner : M/s. G. Rath,
S. Mishra,
A. K. Panda,
Advocates.

- VERSUS -



1. Union of India represented by its Secretary Ministry of Defence, South Block, New Delhi.
2. Chief of Naval Staff Sena Bhavan, New Delhi.
3. Flag Officer, Commanding in Chief Eastern Naval Command, Naval Base, Visakhapatnam.
4. Deputy General Manager, Naval Armament Depot, Sunabeda, Dist. Koraput, Orissa.
5. Chief Staff Officer (Personnel & Administration), Eastern Naval Command, Naval Base, Visakhapatnam (A.P.).

... RESPONDENTS

By legal practitioner : Mr. A. K. Bose, learned Senior Standing Counsel (Central).

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, 21 applicants have prayed for a direction to the respondents to give appointment to them as unskilled labourers.

2. Facts of this case, according to applicants, are that in pursuance of the direction issued by the headquarters, Eastern Naval Command, Visakhapatnam, the Deputy General Manager, Naval Armament Depot, Sunabeda, Respondent No. 4 moved the District Employment Exchange Officer, Koraput to sponsor names of eligible candidates for test/interview for filling up of the posts of unskilled labourer. In response to the requisition sent to the District Employment Exchange, Koraput, the Employment Exchange Authorities sponsored names of 919 candidates. On



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30th of September, 1994, Respondent No. 4 issued Admit Cards to all the sponsored candidates including applicants to attend the test/interview in his Office on different dates. Out of the 919 candidates, only 502 candidates appeared for the recruitment test/interview. A Board consisting of V.S. Parihar, D.G.M, as President, D. Muni, CTO (A&E) as Member (SC/ST) and Sugunana, AASO as Member was constituted for selecting candidates. The test/interview was held from 17.10.1994 to 29.10.1994. Applicants have stated that there were 23 clear vacancies and the Recruitment Board selected 37 candidates of which 15 were of general category, 7 SC & OBC each and 8 from ST category. The Board recommended the names of 23 candidates for appointment to the post of unskilled labourer and kept reserved 14 candidates. Proceedings of the Board are at Annexure-2. It is stated that land of some of the applicants have been acquired by the NAD Sunabeda and most of applicants had the experience of working as Casual labourer in the organisation. Applicants' grievance is that even though selection has been made, no appointment order has been issued and in the meantime, Res. NO. 4 has once again moved the Employment Exchange Officer to sponsor names for filling up of the posts of unskilled labourer. In the context of the above facts, applicants have come up with the prayers referred to earlier.

3. Respondents in their counter, have stated that posts of unskilled labourer fall under Gr. D Industrial Category. Dy. General Manager, Res. NO. 4 had moved the Employment Exchange for sponsoring names for filling up of 23 posts of unskilled labourer of which 11 belonged to unreserved category, 4 to SC,



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6 to ST and 2 to OBC category. After getting the list of candidates, the Dy. General Manager, constituted two boards but as the interview was held in batches, the recruitment Board was shuffled on more than one occasion. One Board was constituted with Mr. M. K. Shrivastava as Chairman, Mr. D. Muni as Member (SC/ST) and Mr. S. Sugunan as Member for SC/ST candidates. For unreserved category the Board was constituted consisting of V. S. Parihar, as Chairman, M. K. Shrivastava, as Member and S. Sugunan as Member. For unreserved and SC/ST candidates, the Board was constituted consisting of V. S. Parihar as Chairman, D. Muni as Member (SC/ST) and S. Sugunan as Member. Respondents have stated that aforesaid variation in constituting the Boards for selection created doubts amongst the public and complaints were received at the Command Headquarters. The whole issue was examined and it was found that in formation of Recruitment Board, several irregularities have been committed. According to the Respondents, irregularities are the following;

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- a) According to the Ministry of Defence order dated 26.10.1990 for filling up of the vacancies exceeding 10, a member from the minority community is to be invariably coopted in the Board but in this case this was not done.
- b) Further, it was mandatory to have a Member of the SC/ST community in the Recruitment Board. But in this case, the Member from SC/ST nominated was withdrawn as soon as
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the interview of SC/ST candidates was over. But as the SC/ST Member of the Recruitment Board has to be associated with the entire recruitment process, including the interview of general and OBC candidates, this was also found irregular.

In view of the above defects, a fresh Board of Officers was constituted on 2.12.1994 with a direction to re-process the selection and also to interview the left over candidates. This Board constituted of Shri G.S. Bhatnagar, DGMNAD, Visakhapatnam as Chairman, Shri M.D. Abdullah, CGO, MO(V) as Member (Minority) and Shri D. Muni, CTO, NAI, Sunabeda as Member (SC/ST). After the Board was so reconstituted, representations were received against members belonging to SC/ST community. Again the matter was reviewed and the Board was revised consisting of P.K. Ghosh as Chairman, M.D. Abdullah, Member (Minority) and K. Chinniah, Member (SC/ST). This board was constituted by taking into it all officers directly from the Command Headquarters but the Board was not allowed to complete the process of selection due to various obstructions caused by the local population. In view of this, the Recruitment process could not be finalised till date. Respondents have stated that a further irregularity was committed in that while notifying the vacancy to the local employment exchange. For 23 posts 200 point roster was followed by mistake, whereas the requirement was for 100 point roster for SC/ST candidates in respect of local recruitment. It is further

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stated that clearance was received for 12 more vacancies over and above original 23 in November, 1994. In view of the above, irregularities, and further developments, the selection of candidates could not be finalised. Respondents have stated that as the selection was not finalised no validity can be attached to the selection made by the earlier recruitment Board whose constitution was irregular. It is also stated that as complaints were received against one of the members of the earlier Board, it was considered prudent to constitute a fresh Board consisting of officers from Headquarters itself. As such, all proceedings of the previous Board were considered invalid and were superseded. Respondents have categorically denied that fresh list has been called for from the Employment Exchange. They have stated that the Recruitment process will be completed out of the earlier list sponsored by the Employment Exchange. Respondents have further stated that as the selection was not completed, no right has accrued in favour of applicants and on the above grounds, they have opposed the prayer of applicants.

4. We have heard Mr. G. Rath, learned counsel for applicants and Mr. A. K. Bose, learned Senior Standing Counsel (Central) appearing for the Respondents and have also perused the records.

5. It has been stated by learned counsel for applicants that for the alleged irregularities in constituting the Board, applicants are no way responsible. They have been duly selected by the Board and the result has been cancelled



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without giving any show cause notice to them. On this ground it has been submitted that the result could not have been legally cancelled. In support of his contention, learned counsel for applicants relied on the decision of the Hon'ble High Court of Orissa in the case of PRAKASH CHANDRA KUANR VRS. SECRETARY BOARD OF SECONDARY EDUCATION ORISSA AND OTHERS reported in 1996(11) OLR 268. In that case, the petitioner after completion of 10th class applied for appearing as a regular candidate for High School Certificate examination and the Board of Secondary Education allowed him to appear in the examination but cancelled his result, on the ground that he was a student of a Sanskrit Toll and was illegally admitted in class 10 of the High School which sent him up illegally as a regular candidate for the High School Certificate Examination. In that case, Their Lordships of the Hon'ble High Court of Orissa held that the action of the Board is not sustainable as it has been done in a one-sided manner without giving the petitioner an opportunity to be heard. From the above recital of fact, it is clear that the facts of that case are widely different from the facts of the present case and the decision on Prakash Chandra Kuanr's case (Supra) no way supports the case of applicants. The second case relied upon by the learned counsel for applicants is AMARJEET JENA VRS. COUNCIL FOR HIGHER SECONDARY EDUCATION ORISSA AND OTHERS reported in AIR 1999 Orissa 129. In that case, the father of a student who was prosecuting All India Secondary School Certificate Course was transferred to a place where no such course was available. On his application for admission into College affiliated to the council conducting



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Higher Secondary Education Certificate course in the State, admission has been given by the College and he duly appeared in the Annual Higher Secondary Examination of 1997 under the Council of Higher Secondary Education but his result was withheld as the council held that a Regd. student of council may be admitted in the Annual examination of the council only if he has completed a regular course of studies in a Affiliated institution ^{for} ~~in~~ not less than two academic session after passing High School secondary Education of Board of Secondary Education. As the applicant did not study for two years in any affiliated institutions recognised by the council of Higher Secondary Education, his result was withheld. Their Lordship of the Hon'ble High Court held that the council has adopted a too literal interpretation to the relevant regulation. The action of the council was disapproved and it was ordered that the result of the petitioner may be published. This case has also no application to the facts of this case. The third case relied upon by the learned counsel for the applicant is SANATAN GAUDA VRS. BERHAMPU R UNIVERSITY AND OTHERS reported in AIR 1990 SC 1075. It is not necessary to go into the facts of this case because this was a case where a candidate was admitted in an examination and later on the University held that the admission to be illegal. In the instant case, according to Respondents the entire selection process suffered from irregularity because the selection board was not properly constituted. No member from minority community was associated ^{ment} ~~which~~ was a mandatory required. The SC/ST member also did not associate himself fully in the recruitment process but confined



his participation only to the test/interview of SC/ST candidates. These are the serious irregularities and it can not be said that notwithstanding these irregularities the selection made by the Board must be held to be valid. Moreover, Respondents have stated that the complaints were received at Headquarters Eastern Naval Command against a particular officer, who was included in the Recruitment Board and in view of this the Headquarters felt that a fresh Board should be constituted comprising of officers only from Headquarters and not any of the local officers. As the Recruitment Board was not properly constituted and also did not function properly because of non-participation of SC/ST member, in the whole process of selection, it can not be said that the selection was validly finalised. Respondents have pointed out that the irregularly constituted Board had accordingly made recommendation regarding the names but these were not accepted and therefore, the selection process could not be said to have been completed. In that context, it can not be said that the applicants or any of such selected candidates have acquired any right to get appointed to the post. In view of the irregularities a fresh Board has been constituted but because of trouble created by the local people the Board could not conduct the fresh process of selection as per the counter of the Respondents. Respondents have further contended that the fresh selection will be confined only to the names originally recommended by the Employment Exchange and no fresh person will be considered. In consideration of the above, we hold that applicants have failed to establish their right to



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get appointed through the process of earlier selection which was not completed. The application, is therefore, held to be without **any merit.** We however, direct the Respondents that fresh process of selection should be undertaken immediately and persons who were earlier sponsored by the Employment Exchange should only be considered and the process of selection by the fresh Board should be completed within a period of 120 days from the date of receipt of a copy of this order.

6. In the result, the Original Application is disposed of in terms of the observations and directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.



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VICE-CHAIRMAN
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