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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 21 OF. 1996
Cuttack, this the 22nd day of August, 2000

Sri Bhagirathi Behura ... Applicant

Vrs.

Union of India and others ... 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
23.8.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 21 Of 1996
Cuttack, this the 2nd day of August, 2000

CORAM:

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

.....
Sri Bhagirathi Behura, aged about 42 years, son of
Narahari Behura, At-Tilokana, P.O-Jahangar,
P.S/Dist.Kendrapara, now working as Khalasi-cum-Helper in
the office of Mechanical Sub-Division, C.W.C.,
Bhubaneswar

..... Applicant,

Advocates for applicant - M/s B.Nayak
T.K.Mandal

Vrs.

1. Union of India, represented through the Secretary,
Ministry of Power of Irrigation, New Delhi.
2. The Chairman, Central Water Commission, Sewa Bhawan,
R.K.Pooram, New Delhi.
3. Chief Engineer, Mahanadi Eastern Region, C.W.C., Plot
No.655, Saheed Nagar, Bhubaneswar-751 007
4. Superintending Engineer, Eastern Region, C.W.C., Plot
No.25R., behind Maharshi College, Saheed Nagar,
At/PO-Saheed nagar, Bhubaneswar-751 007.
5. Executive Engineer, Central Water Commission, Eastern
Rivers Division, Plot No..A-13 and 14, Vani Vihar,
Bhubaneswar-4.
6. K.Rama Rao (Driver), in the office of Eastern Rivers
Division, Plot No.A.13 and 14, Vani Vihar,
Bhubaneswar-4.....Respondents

Advocates for respondents - Mr.A.Routray
ACGSC
for R 1 to 5
and
M/s
P.K.Padhi &
U.R.Bastia
for R-6

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has
prayed for quashing the selection of respondent no.6 for
the post of Assistant Foreman and for a direction to

respondent nos. 1 to 5 to appoint the petitioner to the post of Assistant Foreman.

2. The applicant's case is that on being sponsored by National Employment Service, he was asked to appear at an interview on 24.10.1980 for the post of Workcharged-Welder. The call letter is at Annexure-A/1. He appeared at the interview and was selected in order dated 30.10.1980 (Annexure-A/2). He has stated that though he was selected for the post of Welder he was given appointment as Khalasi-cum-Helper. He filed a representation on 11.12.1980 (Annexure-A/3) to consider his case for appointment as Workcharged-Welder but without any result. The applicant has stated that he is Matriculate and has technical qualification from ITI in Welder trade. He has also working experience in Mechanical Sub-Division and has additional qualification of Diploma in wireless operation. His last representation for the post of Welder is at Annexure-A/5. One post of Assistant Foreman in the workcharged establishment fell vacant and respondent no.5 called for applications from departmental candidates. This notice is at Annexure-A/6. The petitioner offered his candidature and was called to an interview on 30.12.1995. The Selection Committee, however, selected respondent no.6 for the post of Assistant Foreman even though he has been working as Driver in the office of respondent no.5. The applicant has stated that though selection has been made no appointment has been given to respondent no.6. The applicant has stated that as per terms and conditions of the post, respondent no.6 has no experience of operation, maintenance and repairs of various types of machines and

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equipments because he is a Driver in the department for the last 25 years. Against the background of the above facts, he has come up with the prayers referred to earlier.

3. The departmental respondents in their counter have opposed the prayers of the applicant and have stated that the Department has a Mechanical Unit at Bhubaneswar which carries out various repair/fabrication works at sites. This Unit has provision of staff like Foreman or Assistant Foreman, Mechanics and Helpers etc. The workshop is headed by an Assistant Engineer and is generally supervised by a Foreman or Assistant Foreman. The post of Foreman has been lying vacant for a long period and in order to improve the supervision work, a proposal was sent for filling up of the post by considering experienced personnel of the Department as well as suitable candidates from Employment Exchange. Permission was accorded by respondent no.3 for filling up of the post through direct recruitment. The Selection Committee conducted the selection process on 30.12.1995 amongst 10 candidates, six from Employment Exchange and four departmental candidates including the applicant. The departmental respondents have stated that even though the applicant was at that time under suspension due to his indisciplined and criminal activities and disciplinary proceedings and criminal case were also pending against him, the departmental respondents to give fair justice to the applicant called him to appear before the Selection Committee for written, practical and viva voce/interview. After the selection procedure was completed, recommendation of the Selection Committee was sent to higher authorities for approval. At the time of filing of

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QA the approval of higher authority had not been obtained and the outcome of the selection process was not known, moreso to the applicant. It is stated that later on, after getting the approval of the competent authority, respondent no.6 was given appointment order for the post of Assistant Foreman on 23.3.1996 and he has already joined the new post. The departmental respondents have stated that it is not for the applicant to say that he is the most suitable candidate amongst all the candidates. It is for the Selection Committee to adjudge the suitability of the candidates and on the above grounds they have opposed the prayers of the applicant.

4. The applicant has filed rejoinder in which he has stated that he has challenged his suspension before the Tribunal in OA No. 510/95 which is pending. He has also stated that there is no temporary post of Assistant Foreman. There is a permanent vacancy in the post of Foreman consequent upon retirement of one Mr.A.K.Sahu and as there is no post of Assistant Foreman in the Workshop for last 20 years, the appointment of respondent no.6 is ab initio void.

5. Respondent no.6 in his counter has stated that he has passed National Apprenticeship Certificate Examination in Fitter trade and has worked in TELCO, Jamshedpur as an apprentice for a period of three years and has experience in repairing all types of automobile machines and has also knowledge about operation of all types of machines and tools. He has also served as Motor Mechanic for more than four years in Central Reserve Police Force. It is stated that he has designed, fabricated and erected automatic water level

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recorders on river bridge piers at various places and has completed many jobs assigned to him without the help of Foreman and Mechanical Junior Engineer, and because of his experience he has been selected by the Selection Committee. On the above grounds he has opposed the prayers of the applicant.

6. We have heard Shri B.Nayak, the learned counsel for the petitioner, Shri P.K.Padhi, the learned counsel for respondent no.6, and Shri A.Routray, the learned Additional Standing Counsel for the departmental respondents and have also perused the records.

7. The first point of the applicant is that he was selected for the post of Workcharged Welder but was given appointment as Khalasi-cum-Helper . This happened in October 1980 and the applicant represented in December 1980 for giving him the post of Workcharged Welder. He has thereafter filed several representations as has been mentioned by him in the OA. After a passage of more than 16 years he cannot be allowed to agitate the matter again. Therefore, the question of his initial appointment as Workcharged Welder is not a matter which can be gone into by us after passage of more than one and half decades.

8. The second contention of the applicant is that there is no post of Assistant Foreman in the Workshop. There is only a post of Foreman and therefore respondent no. 6 could not have been appointed in the post of Assistant Foreman which is not in existence. From the vacancy circular enclosed by the applicant himself at Annexure-A/6 we find that the notice was issued to fill up one post of Assistant Foreman in

the workcharged establishment. The departmental respondents have stated in their counter that they initiated selection process after obtaining approval of higher authorities, i.e., respondent no.3. The applicant himself has applied for the post of Assistant Foreman, and therefore it is not open for him now, after he has not been selected, to claim that there is no post of Assistant Foreman. This contention is therefore held to be without any merit and is rejected.

9. The last contention of the applicant is that he has the requisite qualification for the post of Assistant Foreman whereas respondent no.6 is working as a Driver and has no qualification for the post. Respondent no.6 has pointed out the qualifications he has got in his counter which have been backed by necessary certificates enclosed to his counter. In any case it is for the Selection Committee to consider the suitability of different candidates and make the selection. The Tribunal cannot adjudge the suitability of rival candidates who were before the Selection Committee and substitute their view in place of the view taken by the Selection Committee. As the Selection Committee has given opportunity to the applicant also to appear at the selection test, the applicant cannot claim that his case has not been considered. Besides stating that respondent no.6 is working as a Driver, the applicant has not stated anything else in support of his contention that respondent no.6 does not have the necessary technical qualification. In any case as we have already noted this

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is a matter for the Selection Committee and not for the Tribunal.

10. In consideration of all the above, we hold that the Application is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)

23.8.2000
VICE-CHAIRMAN

August 23, 2000/AN/PS