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CAT (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NOS. 660, 698 & 699 OF 1996
Cuttack this the 18th day of Feb/02

IN O.A. No. 660/96

1. Sk. Abdul Rahim, Card No. 685
2. Patitapabana Dandapat, T. No. 684
3. G. Appa Rao, T. No. 575
4. Sk. Ekko, T. No. 500
5. M. M. Rao
6. Biswanath Jena, T. No. 450
7. Smt. Pana, T. No. 445

All are Technician 'A' in Proof and Experimental Establishment, Chandipur, Balasore

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Applicants

By the Advocates

M/s. B.K. Sahoo
K.C. Sahoo

-VERSUS-

1. Union of India represented by the Scientific Adviser to Ministry of Defence and Director General of Research and Development, Government of India, Ministry of Defence, DHQ., New Delhi-110011
2. The Director and Commandant, Proof and Experimental Establishment, Chandipore, Balasore

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Respondents

By the Advocates

Mr. A.K. Bose, Sr.
Standing Counsel

IN O.A. No. 698/96

1. Shri Gagan Jena (SC) Card No. 629
2. Shri Dinabandhu Behera (SC) Card No.
3. Shri Agari Charan Sethi (SC) Card No.
4. Shri Laxmidhar Sethi, (ST) Card No.
5. Shri Sukul Majhi (SC) Card No. 641
6. Singrai Majhi, T. No. 506, Proof and
7. Biswanath Hembra

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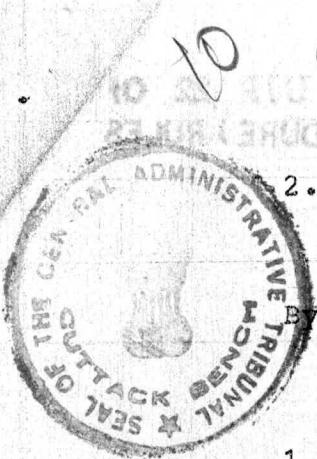
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2. The Director and Commandant, Proof and Experimental Establishment, Chandipur, Balasore

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Respondents

By the Advocates

Mr. A.K. Bose, Sr.
Standing Counsel

IN O.A. No. 699/96

1. Prasanna Jena, T. No. 429, General Store

2. Maha Majhi, T. No. 603, Admn. Wing

3. Laxman Majhi, T. No. 674, Equipment Wing

4. Kandan Hansda, T. No. 634

5. Sambhunath Behera, T. No. 707 (SC), Equipment Wing

All are Technician 'A', in Proof and Experimental Establishment, Chandipur, Balasore

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Applicants

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Respondents

By the Advocates

Mr. A.K. Bose, Sr.
Standing Counsel

O R D E R

MR. S.A.T. RIZVI, MEMBER (ADMINISTRATIVE): These Original Applications, involving seven applicants in O.A. 660/96, seven applicants in O.A. 698/96 and five applicants in O.A. 699/96, respectively, are directed against the orders of promotions dated 12.6.1996, 24.7.1996 and 20.8.1996 vide Annexures-1, 2 and 3, respectively, by which personnel working as Technicians-A have been promoted to the post of Technicians B. The prayer made is that the applicants in each of these O.As should be directed to be promoted to the post of Technicians 'B' in pursuance of the earliest

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promotion order dated 12.6.1996 (Annexure-1).

2. The learned counsel appearing on behalf of the applicants has raised the issues of mala fide and violation of the principle of natural justice. According to him, while the applicants's names figured in the promotion order dated 12.6.1996 (Annexure-1), the orders issued subsequently after cancelling the aforesaid earliest order did not contain the names of any of the applicants. This has happened, as alleged by the learned counsel for the applicants, due to manipulation made by the Respondents in order to accommodate others, who had failed to qualify and whose names did not figure in the earliest promotion order (Annexure-1). He has also submitted that in consequence of the aforesaid order of promotion dated 12.6.1996, the applicants had submitted their options as required and were awaiting placement in the higher Grades though when the orders dated 24.7.1996 were issued. Later even/this order was ^{also} cancelled in favour of the order dated 20.8.1996 no show cause notice was served on the applicants before removing their names from the aforesaid order dated 12.6.1996. Such a course of action is repugnant to the principles of natural justice and therefore, according to the learned counsel, the aforesaid promotion orders dated 24.7.1996 and 20.8.1996 should be quashed and set aside and the aforesaid earliest order dated 12.6.1996 restored and the applicants accordingly promoted.

2. The learned counsel appearing on behalf of the Respondents has submitted that the promotions under the Limited Flexible Complementing Scheme (L.F.C.S.) are required to be made purely on the basis of merit and an

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Assessment Board is constituted for considering claims of various eligible candidates and its recommendations are made available to the Head of the Establishment. Promotions are made thereafter subject to the approval of the aforesaid recommendations by the Head of the Establishment. 75% marks are allotted for Trade test including interview and another 25% are earmarked for performance appraisal report. Further a maximum five years of service in the previous grade is required for determining the eligibility of a candidate.

Posts are reserved for SC, ST and OBC categories in accordance with the Government policy and in order to fill up the reserved posts, a 40 point roster is followed. A fixed percentage of the total number of eligible candidates is arrived at for making promotions from the post of Technicians A to the post of Technicians B. Thus, during the relevant period there were 157 eligible candidates (Technicians A). Out of this, going by the prescribed percentage, 110 were promoted. Following the roster, of the aforesaid 110 posts of Technician B, 85 belong to the general category, 17 $\frac{1}{2}$ to SC category and 8 $\frac{1}{2}$ ST category. Respondents have proceeded to make selections wholly in accordance with the aforesaid Rules/Guidelines laid down for such promotions.

3. The relevant rule made applicable in the present case is the Defence Research and Development Organisation (Junior Scientific Officer) Recruitment Rules, 1980 (Annexure-A), notified on 16.8.1995. Subsequently detailed guidelines have been issued by the Respondents for making promotions in accordance with the aforesaid Rules (Annexure-B). The Policy of Reservation has been laid down in the O.M. dated

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13th December, 1995 (Annexure-C)

4. Immediately after the promotion order at Annexure-1 was issued, the Respondents discovered several mistakes therein. They also discovered mistakes in the order/letter issued on 24.7.1996 as well. The details of mistakes committed on both the occasions are described in Paragraphs-13, 14 and 15 of the counter filed by the respondents on 5.11.1996. Since these mistakes have been attacked by the applicants, we find it necessary to reproduce the aforesaid three paragraphs in the following.

"13. That it was subsequently detected that the list prepared under Annexure-1 was totally misconceived in as much as the word 'general' was construed to only the persons from Un-reserved category and even in this it was found that in the un-reserved list a few SC & ST names have been included as they were not recorded as SC & ST in the first place, and further it was detected that the merit list has been prepared from the persons who obtained qualifying marks on the basis of seniority and in the new Rule it is prescribed that the merit will only be the criteria. Thus the name of 7 persons were included in the first list published under Annexure-1.

14. That this mistake having been detected that it is contrary to the new Rules for promotion, as the selection for promotion has to be done on the basis of merit only, from a combined merit list keeping in mind that the word 'general' includes reserved & un-reserved candidates. Thus the promotion sought to be given being based on a new scheme, there was misinterpretation and it was decided to cancel the results published under Annexure-1. However, in the 2nd list also there was several mistakes. The respondents misinterpreted the provisions of Govt. of India, Deptt. of Personnel Training O.M. No.36012/13/88-Est.SCT dated 22.5.99 vide which it is stated that successful SC/ST candidates coming on their own merit should not be adjusted against their reserved quota, but should be considered as general candidates. Therefore, the 2nd result under Annexure-2 was published by selecting

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85 candidates from the common merit list including SC & ST on their own merit. Besides this, a merit list was prepared of 17 persons from Scheduled Caste quota in which 13 persons from SC candidates and 4 ST candidates, and also another list was prepared for 8 candidates from S.T. category. Thus out of 110 selected, 55 persons were from un reserved category, 30 from SC and 25 from ST. It subsequently came to the notice of the respondents that this is also an incorrect procedure in as much as the Govt. of India letter dated 22.5.999 referred to above was for direct recruitment and is not applicable for promotion.

15. That it is relevant here to state that in the 2nd list 7 petitioners could not find place. As there was confusion in publication of the result, it was decided to refer the matter to the DRDO headquarters, New Delhi and seek clarifications of the correct procedure. The DRDO Headquarters vide their letter No.16666/RD/Pers-1 dated 1st August 1996 issued clarification that a general merit list will consist of all individuals belonging to unreserved SC & ST categories and the list will be for candidates securing 60% marks or above. A separate merit list was to be prepared for SC & ST personnel securing 55% marks or above. If the required number of SC/ST in the general candidates as per quota reserved for them are not available in the general merit list, then the difference will be made up by selection SC/ST candidates from their respective merit list. A copy of the DRDO headquarters letter dated 1st August 1996 is annexed herewith as Annexure-D.

That the said clarification dated 1st August, 96 are in line with the interpretation of the procedure to be followed in matters of reservation in as much as the Ministry of Defence, New Delhi vide their letter dated 26 Sept 96 has elaborately clarified the procedure to be followed in preparation of merit list in case of promotion from one grade to another. ..."

5. The learned counsel for the Respondents submitted that since confusion still prevails after the 2nd order dated 24.7.1996 had been issued, though not implemented, and mistakes could still be found as stated, they decided to refer the matter to the D.R.D.O. Headquarters, New Delhi, for seeking clarifications and in order to ascertain the correct procedure to be followed. The matter was clarified by the D.R.D.O.

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Headquarters on 1.8.1996 (Annexure-D), in which they have advised that three separate lists were to be prepared in the manner stated therein. While the first list to be so prepared was supposed to consist of all those who had secured 60% or more marks, the other two lists were to be prepared in respect of SC and ST categories, respectively, in accordance with the diluted criterion of 55% or more of marks. The first list aforesaid could contain names of such SC and ST categories candidates also, who had secured 60% or more of marks. The other two lists were to contain the names of only SC & ST category candidates.

These three lists were to be operated simultaneously in order to ensure that reserved category candidates were promoted to the maximum possible extent, within the total number of vacancies to be filled by these categories. The aforesaid clarification ~~rendered~~ referred by the D.R.D.O. was followed up a little later by an Office Memorandum issued by the Ministry of Defence on 26th September, 1996 (Annexure-E), which affirms the line of action indicated by the D.R.D.O. and also proceeds to enclose therewith an illustrative chart to enable the respondents to prepare a revised order correctly and in accordance with the guidelines and the procedure. It goes without saying that in so far as DRDO (JSO) Recruitment Rules, 1980 (Annexure-A) are concerned, the respondents have, at the time of making promotions, adhered to the rule position contained in Rules 8 to 11 of the aforesaid Rules of 1980. The learned counsel appearing on behalf of the Respondents has submitted that the promotion order dated 20th August, 1996 (Annexure-3) has

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been prepared after clubbing altogether the three lists prepared in accordance with the DRDO's clarification dated

1.8.1996 and Ministry's O.M. Dated 26th September, 1996

(Annexure-E) and the same is entirely in order and the applicants' charge of manipulation is baseless.

6. When called upon to indicate as to how the Respondents are likely to have manipulated the results, the learned counsel appearing on behalf of the applicants has drawn our attention to the contents of Paragraph 2 of the rejoinder filed in O.A. No.698/96. The four names which have been cited in the aforesaid paragraph are those of S/Shri S.Jena (SC), B.Jena(SC), R.Majhi (ST) and L.Majhi (ST).

We have perused the orders placed at Annexures-1, 2 and 3 and do not find any indication therein to the effect that the aforesaid four persons initially shown as having secured less than 60% marks, were later found to have secured more than 60% marks. The order dated 20.8.1996 has been issued, as already stated, after clubbing the three lists separately prepared and in accordance with the roster position. There is nothing in this list which would provide even a whisper of the kind of manipulation alleged in the aforesaid paragraph of the rejoinder filed in O.A.698/96.

7. In so far as the requirement of show cause notice is concerned, the learned counsel appearing on behalf of the Respondents submits that the admitted position is that the lists contained in orders dated 12.6.1996 and 24.7.1996 had not been prepared in accordance with the rule position, having regard to the guidelines for filling up the reserved posts, and to this extent, the aforesaid two lists being incorrectly

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✓ prepared were liable to be quashed and set aside.

Accordingly the Respondents had, on their own, cancelled the aforesaid lists. According to him, the principle of estoppel cannot be invoked in the face of the settled position of law/rules. The Respondents were, therefore, competent to cancel the aforesaid two orders/lists and issued a modified and corrected list in accordance with the rule position and the guidelines on the subject. The principles of natural justice cannot be successfully invoked in such a situation. Hence, according to him, the applicants have no case and the Original Applications deserve to be dismissed.

8. For all the reasons contained in the preceding paragraphs all these Original Applications are dismissed.

There shall be no order as to costs.

Sd/- M.R. MOHANTY
MEMBER - (J)

MEMBER (JUDICIAL)

Sd/- S.A.T. RIZVIT
MEMBER - (A)

MEMBER (ADMINISTRATIVE)

B.K.SAHOO//

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Section Officer,
Central Administrative Tribunal,
Cuttack Bench, Cuttack

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~~Cuttack Bench, Cuttack.~~
~~Central Administrative Tribunal,~~
~~Section Officer,~~