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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION No.80 OF 1998
Cuttack, this the 17th day of November, 1999

Prakash Chandra Parida ... 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.*

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 11.99

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CORAM:

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

.....
Prakash Chandra Parida, aged 22 years, son of Duryadhan Parida, At/PO-Lenkudipada, P.S/Dist.Nayagarh, C/o Gautam Mukherji, Advocate, Raghunath Jew Road, Telenga Bazar, Town/District-Cuttack-753 009

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Applicant

Advocates for applicant - M/s Gautam
Mukherjee,
Sabit Palit
P.Mukherjee
M.Malik

Vrs.

1. Union of India, represented through General Manager, South Eastern Railway, Garden Reach, Calcutta-700 043.
2. Railway Recruitment Board, Bhubaneswar, OFDC Building, II Floor, A-84, Kharavela Nagar, Bhubaneswar-751 001, represented through its Chairman
3. Secretary, Railway Recruitment Board, Bhubaneswar, OfDC Building, II Floor, A-84, Kharavela Nagar, Bhubaneswar, Pin-751 001.

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Respondents

Advocates for respondents - M/s B.Pal
S.K.Ojha
P.C.Panda
P.Das
A.K.Misra

S. S. Som.
ORDER
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a declaration that the Certificate dated 23.11.1995 at Annexure-7 be accepted as O.B.C.Certificate and the applicant be evaluated as OBC candidate and placed in the merit list.

2. Facts of this case fall within a small compass and can be briefly stated. Railway Recruitment Board issued an advertisement on 1.10.1996 calling for applications for various posts including post of Probationary Assistant Station Master. The applicant had the requisite qualification for the post and he applied for the post of probationary Assistant Station Master. The applicant belonged to OBC category and applied under OBC quota. Along with his application the petitioner enclosed State OBC Certificate issued by Tahasildar, Nayagarh, which is at Annexure-2. The applicant belongs to Chasa community which is included in the O.B.C.List published by the State Government but did not find place in the Central Government Notification for OBC categories. The applicant was called for a written test on 6.4.1997. After clearing the written test, he was called for psychological test on 5.7.1997. The applicant has stated that from the admit card issued to him and the notice for psychological test which have been enclosed at Annexures 3, 4 and 5 it is clear that he was called to the test as an OBC candidate. During the viva voce test he was informed that the State OBC Certificate given by him is not acceptable and he was asked to produce an OBC Certificate issued by Government of India. He was asked to give an undertaking that he would submit the certificate within 15 days. The applicant has stated that on 6.12.1996 Government notified Chasa community as OBC. This Government of India notification was further gazetted by the State Government in their notification dated 8.12.1997 which is at Annexure-6 series. Coming to know of this the petitioner applied

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to Tahasildar, Nayagarh, for issuing of a certificate and the certificate was issued to him on 8.9.1997 which is at Annexure-7. The applicant immediately produced the certificate before the respondents in compliance of the undertaking furnished by him on 4.9.1997. But in spite of this his case was not considered as an OBC candidate. That is why he has come up in this petition with the prayers referred to earlier.

3. Before proceeding further and noting the averments made by the respondents in their counter it is necessary to note that the certificate dated 4.9.1997 issued by Tahasildar, Nayagarh, declaring that the petitioner belongs to OBC category as recognised by Government of India is at Annexure-2 and not at Annexure-7. At Annexure-7 is a certificate dated 23.11.1995 issued by Additional Tahasildar, Nayagarh, declaring the applicant as belonging to Socially and Educationally Backward Class under Government of Orissa notification on the ground of his belonging to Chasa community. While considering the OA this mistake made by the applicant has to be kept in view.

4. Respondents in their counter have mentioned that in the advertisement itself it was specifically provided that persons belonging to SC,ST and OBC category should obtain and file Caste Certificate from competent authority not below the rank of Tahasildar. For OBC community a certificate to the effect that the candidate does not belong to creamy layer is also required and the certificate should be in the prescribed format circulated by the Department of

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Personnel. The respondents have stated that at the time of advertisement for the post on 1.10.1996 Chasa community was not included in the Central OBC List notified by Government of India. This was included on 6.12.1996. It is stated that the applicant knowingly had furnished wrong information stating that he belongs to OBC category. It is also stated that closing date for receipt of applications was 7.11.1996. By that date *SJM.* Chasa community was not included in the OBC list by Government of India. This was done only on 6.12.1996 and therefore it is stated that the applicant could not have been selected as OBC candidate. On the above grounds, the respondents have opposed the prayer of the applicant.

4. This matter was posted to 5.10.1999 for peremptory hearing. On that day the learned counsel for the petitioner and his associates were absent nor was any request made on their behalf seeking adjournment. In view of this, it was not possible to drag on the matter indefinitely. We have therefore heard Shri B.Pal, the learned Senior Panel Counsel for the respondents and have also perused the records.

5. From the above recital of facts it is clear that the element of controversy in this case is very limited. The petitioner applied for the post of Probationary Assistant Station Master for which the last date for receipt of applications was 7.11.1996. Along with his application he submitted a certificate from Additional Tahasildar, Nayagarh, issued on 23.11.1995 (Annexure-7) indicating that he belongs to

Chasa community which is recognised as a socially and educationally backward class under Government of Orissa notification. On the basis of this certificate he applied for the above post as an OBC candidate. From the advertisement it appears that for Probationary Assistant Station Master, out of 196 vacancies, 59 vacancies were for OBC candidates. But at the time of notification of the vacancies on 1.10.1996 or at the time of making the application by the petitioner or by the last date of receipt of applications which was 7.11.1996, Chasa community had not been recognised as belonging to OBC category by the Government of India. This has been done in notification dated 6.12.1996, i.e., a month after the last date of receipt of applications was over. The eligibility of the candidates has to be adjudged on the basis of their position on the last date of receipt of applications and on the basis of averments made by the applicant himself it is clear that by 7.11.1996 Chasa community was not included in the OBC list by Government of India. In view of this it is clear that the applicant could not have been selected as an OBC candidate. It is no doubt true that subsequently on 6.12.1996 Chasa community has been included in OBC category by Government of India, but this notification cannot be given retrospective effect. Moreover, there may be many other candidates like the applicant who could have got the benefit of OBC category if the notification had been given retrospective effect. But those persons are not before us and a special dispensation cannot be given to the applicant as this will be inequitous and

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discriminatory. In view of the above, we hold that the applicant is not entitled to be considered as belonging to OBC category as declared by Government of India on the last date of receipt of application on 7.11.1996 and therefore he is not entitled to be considered for selection as an OBC candidate. We therefore hold that the applicant has not been able to make out a case for the reliefs claimed by him.

6. In the result, the Original Application is rejected but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)

17.11.99
VICE-CHAIRMAN

AN/PS