

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 446/1999
Cuttack, this the 4th day of Nov, 2004

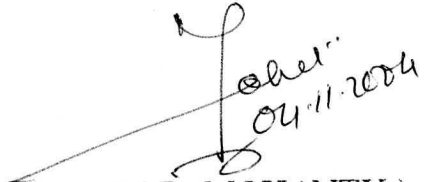
Jasobanta Mohapatra and others Applicants

Vrs.

Union of India & Others Respondent

FOR INSTRUCTIONS

- (1) Whether it be referred to the Reporters or not ? 75
- (2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 75


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.446/1999

Cuttack, this the 4th day of Nov, 2004

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

&

HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

-
1. Jasobanta Mohapatra, aged about 35 years, son of Sarangadhar Mohapatra
 2. Manoranjan Mandal, aged about 35 years, son of Gorachand Mandal
 3. Prabhanjan Sahu, aged about 36 years, son of Binod Behari Sahu
 4. Prakash Ch.Panda, aged about 35 years, son of late Pitabash Panda
 5. Balakrishna Moharana, aged about 37 years, son of Niranjana Moharana
- All are working as Fitter General (Skilled), Ordnance Factory, Badamal, District Bolangir

.....Applicants

Vrs.

1. Union of India, represented through its General Manager, Ordnance Factory
 2. Works Manager/Administration @, Ordnance Factory
 3. Works Manager/Administration (D), Ordnance Factory
Respondent Nos. 1 to 3 are of Ordnance Factory, Badmal, District Bolangir.
 4. K.Jal, Token No.CM-24, PL No. 6082
 5. P.Biswal, Token No.ME-09, PL No.6107
 6. T.Guru, Token No. CM-06, PL No. 6099,
 7. B.S.Dhal,Token No.CM-26, PL No. 6137
 8. B.K.Bag, Token No.BWS-06, PL No. 6084
 9. A.Barik, Token No.BWS-08, PL No.6093
 - 10.P.C.Behera, Token No.ME-08, PL No. 6095
 - 11.P.K.Panda, Token No.ME 15, PL No.6136
 - 12.B.K.Mishra, Token No. ME 21, PL No.6132
 - 13.G.C.Patel, Token No.BWS 10, PL No.6097
 - 14.P.Pradhan, Token No.BWS 12, PL No. 6100
 - 15.P.K.Panda, Token No. ME 11, PL No. 6138
 - 16.N.C.Maharaj, Token No. CM-52, PL No.6102
 - 17.S.C.Dash, Token No. EM-15, PL No.6105
 - 18.N. Dhal, Token No. BWS-17, PL. No.6109
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- 19.J.Barik, Token No.BWS-09,PL. No.6096
- 20.R.T.Rao, Token No. BWS-14, PL. No.6103
- 21.R.C. BAL,Token No. BWS-18, PL. No.6131
- 22.T. Bahad, Token No. BWS-16, PL. No.6106
- 23.C.Mahanada, Token No. CM-14, PL. No.6087
- 24.L. Baitharu, Token No. CM-11, PL. No.6091
- 25.M.M. Nanda, Token No. ME-07, PL. No.6094
- 26.P.Bagarty, Token No. BWS-05, PL. No.6083
- 27.P. Patel, Token No. BWS-21, PL. No.6086
- 28.B.S. Baitharu, Token No. CM-10, PL. No.6085
- 29.R.K. Sahu, Token No. ME-12, PL. No.6090
- 30.B.B. Kumbher, Token No. ME-13, PL. No.6089
- 31.R. Seth, Token No. CM-07, PL. No.6092
- 32.A. Mahanada, Token No. CM-05, PL. No.6088
- 33.B.Bag, Token No. BWS-11, PL. No.6098
- 34.A. Mohanada, Token No. BWS-13, PL. No.6101
- 35.J.C.S.Roy, Token No. U-04/05, PL. No.6170
- 36.K.S.Nanda, Token No. CM-09, PL. No.6204
- 37.S. Behera, Token No. CM-21, PL. No.6200
- 38.A. Bhoi, Token No. BWS-25, PL. No.6187
- 39.N.C. Behera, Token No. BWS-24, PL. No.6177
- 40.P. Naik, Token No. BWS-26, PL. No.6203
- 41.S.K. Panigrahi, Token No. ME-16, PL. No.6172
- 42.B.Bahua, Token No. BWS-27, PL. No.6206
- 43.B.Chhatra, Token No. CM-22, PL. No.6201
- 44.S.Sahu, Token No. UO4/01, PL. No.6253
- 45.N.Tapno, Token No. BWS-52, PL. No.6258
- 46.K. Maji, Token No. UO3/01, PL. No.6254
- 47.A. Dadel, Token No. ME-14, PL. No.6256
- 48.N.Bilung, Token No. CM-38, PL. No.6261

- 49.T. Bhoi, Token No. BWS-01, PL. No.6264
50.R.K. Bhoi, Token No. BWS-03, PL. No.6265
51.RD. Bhoi, Token No. BWS-19, PL. No.6273
52.L.M. Bhoi, Token No. BWS-20, PL. No.6275
53.D.S. Bhoi, Token No. BWS-04, PL. No.6267

..... Respondents.

Advocates for the applicant - Mr. G.A.R. Dora

Advocates for the respondents - Mr. A.K. Bose

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Jasobanta Mohapatra and four others have filed this Original Application challenging their position in the seniority list of Fitter General (Skilled) published by the Respondents on 8.8.1998. Their contention is that whereas their positions in that seniority list has been shown at Sl.Nos.52 to 56, their names should have found place from Sl.Nos.1 to 5 above private Respondent Nos. 4 to 53.

2. The facts of the case in a narrow compass are that the applicants were interviewed and selected on 27.12.1988 for the post of Fitter General (Semi Skilled), being sponsored through the Employment Exchange. Although some of the candidates from the select list were offered appointment at that time, the names of the applicants were kept in the waiting list and they were appointed only in the year 1994. Their grievance arises from the fact that whereas their names were kept in the waiting list, the Respondents held an interview in the year 1990 for Semi Skilled posts and filled up some of those posts and those persons were given further promotion in 1993 as Fitter

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General (Skilled). The names of this category of officials appeared from Sl.Nos.1 to 31 in the seniority list (Annexure A/9) and the officials whose names appeared from Sl.Nos. 33 to 51 were appointed in 1991 as Danger Building Workers (Semi Skilled) (Annexure A/3). The latter group was further promoted as Fitter General (Skilled) in the year 1994. The applicants have stated that they were appointed in 1994 and then promoted in 1998 as Fitter General (Skilled) and as they were selected in the year 1988 their seniority position could not be depressed as they belong to the select list of 1988. They have referred to the Government of India instructions (Annexure A/16) that their names having been kept in the waiting list, they were entitled to seniority over the officials who have been appointed through subsequent select lists prepared for appointment to the same grade. They had represented to the Respondents vide their representations at Annexures 10 series, but their representations have been turned down by the Respondents as revealed from the reply dated 18.11.1998 (Annexure A/11). Being aggrieved, they have approached this Tribunal calling the seniority list as arbitrary and violative of Articles 14 and 16 of the Constitution.

3. The departmental Respondents have opposed the O.A. by filing detailed reply. They have assailed the O.A. on the ground of being barred by principles of resjudicata as similar applications were filed before this Tribunal in O.A.Nos.314/98 and 339/99, both of which were disposed of by the Tribunal after upholding the seniority principles followed by the Respondents. O.A.No.339 of 1999 was dismissed being barred by limitation as also being

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devoid of any merit. They have also contested the O.A. on the ground that the application has been made on wrong facts and lack of understanding of the personnel policy of the Respondent-organization. It has been stated by them in reply to the allegation of merging the trade of Pump Attendant with Fitter General (Mech.) with some ulterior motive, that the requisition to the District Employment Exchange had been placed for the post of Pump Attendant much before implementing the recommendations of the Guha Committee. However, subsequently, the incumbents in the trade of Pump Attendant were redesignated as Fitter General (Mech.) in public interest. The redesignated employees en block retained their seniority over the applicants because length of service was taken into account for fixing seniority of the officials as per the Government instructions in this regard. They have further submitted that the applicants were in the waiting list and having been appointed later than the Pump Attendants (private Respondent Nos. 4 to 53) the applicants had to be placed below those private Respondents in the seniority list. With regard to the allegation that before exhausting the waiting list prepared in the year 1988, the Respondent-organization had resorted to recruitment of new hands from open market in 1990 and 1992, they have stated that there was an immediate need of personnel in a particular trade for taking up different production related jobs and for that purpose the departmental candidates were trade-tested to fill up the quota meant for the departmental employees. They have denied that there has been any merger of trade categories. They have stated that only redesignation from one trade to another in the same grade of

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semi skilled on passing trade test was undertaken to meet the requirement of personnel. There had been thus no fresh recruitment from outside and therefore, the applicants can have no grievance. With regard to the recruitment made in 1992, they have stated that 7 nos. of posts were filled up through direct recruitment, but that was a special drive for selecting ST candidates to fill up the backlog posts of Pump Attendant under that reserve category. On the other hand, the applicants belong to general category and being in the waiting list, they could not have been appointed against the ST vacancies. In fact, the vacancies in the general category occurred only during the year 1994 as per the recruitment roster then prevailing and no sooner the vacancies were available, the applicants were appointed. They have also submitted that the grievances of the applicants have also been given due importance and all care has been taken by the Respondent-organization to redress the same.

4. Some of the private Respondents have filed counters opposing the prayers made by the applicants in the O.A.

5. We have heard the learned counsel for both the sides and have also perused the records placed before us. The applicants have filed rejoinder and the departmental Respondents have filed additional counter and we have perused the same.

6. In this O.A. the applicants have challenged the seniority position given to them in the seniority list of Fitter General (Skilled) published in August 1988 on the plea that they having been selected in the year 1988 are entitled

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to seniority according to the merit position in the select list of that year (1988). In support of their claim they have drawn our notice to the O.M. No. 22011/2/79-Estt.(D) dated 8.2.1982 issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms. The learned counsel for the applicants has strenuously argued that in terms of the circular, the life of the select list was permanent and therefore, the delay, which took place in their appointment, could not have led to deprivation of seniority by placing them below those who were recruited in 1990 and 1992. In the written note of arguments, they have also relied on the ratio of the judgment in the case of Prem Prakash v. Union of India and others, 1985 (2) SCR 757, that when the names of selected candidates are already available, there should either be no further recruitment till the available selected candidates are absorbed or the declared vacancies for the next recruitment should take into account the number of persons already on the list of selected candidates awaiting appointment. He has argued that as the applicants were awaiting appointment, it was wrong on the part of the Respondent-organisation to have resorted to fresh recruitment and that they cannot make the applicants suffer by depressing their seniority position. He has also argued that the applicants should be compensated by keeping their seniority at higher position. We are not impressed by this argument.

7. We have carefully gone through the O.M. dated 8.2.1982 issued by the Ministry of Home Affairs. We have also considered the submissions made by the Respondent-organization both in their counter and in the additional

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counter with regard to the selections made in 1988, 1990 and 1992. From their submissions it is clear that during the year 1988 they had prepared a list of 15 candidates from open market for appointment as Fitter General (Semi Skilled). Out of this list, 5 candidates (General 3, SC 1, and ST 1) were offered appointment in the year 1989. From the remaining selected candidates 2 (two) more ST candidates were issued appointment letters in the year 1990. The rest 08 candidates were issued appointment letters in the year 1994 who were candidates from General-07 and SC-01. In fact during 1990 there was no recruitment from open market. But the Respondents had filled up vacancies in the grade of Fitter General (Semi Skilled) by adopting transfer method to fill up the departmental quota of vacancies in the grade strictly in terms of the Recruitment Rules. A copy of the Recruitment Rules has been placed on record by the Respondents. With regard to the recruitment made during 1992 they have clarified that it was a special recruitment drive to fill up backlog vacancies under ST category. With this explanation now available, the plea put up by the applicants that the Respondents had resorted to two recruitment drives, one in 1990 and another in 1992 keeping them waiting in the select list appears to be a misconceived argument. It has also come out during the argument that the applicants belong to general category and therefore, they could be appointed only when vacancies under General Category were available which so happened only in the year 1994. Therefore, they were offered appointment in 1994. That being the facts of the case, there appears no merit in the grievance of the applicants that they were denied appointment

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for a long time by the Respondents arbitrarily. As the applicants were appointed in 1994, they can claim seniority only from the date of joining the post and never earlier. The seniority principles followed by the applicants have already been upheld by this Tribunal in OA Nos. 314/98 and 339/99 and therefore, nothing survives in this O.A. for further adjudication.

3. For the aforesaid reasons, we see no merit in this O.A. which is accordingly dismissed. No costs.

(M.R. MOHANTY) 04.11.2004
MEMBER (JUDICIAL)
AN/PS

(B.N. SOM)
VICE-CHAIRMAN