

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 466 OF 2000
Cuttack, this the 16th day of April, 2004.

Bholanath Kanhei, Applicant.

-Versus-

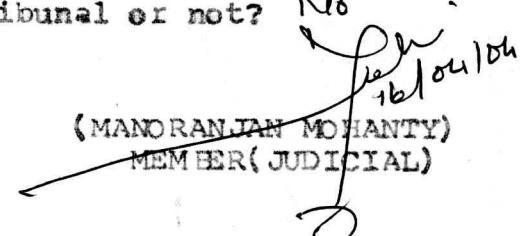
Union of India & Ors. Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No

2. Whether it be circulated to all the Benches of
the Central Administrative Tribunal or not? No


(B. N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 466 of 2000
Cuttack, this the 16th day of April, 2004.

C O R A M :-

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN

A N D

THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.)

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BHOLANATH KANHEI,
Aged about 25 years,
S/o. Sembari Kanhei,
Residing at Sanaharijan Street,
Gate Bazar, At/Po: Berhampur,
Dist. Ganjam.

....

Applicant.

By legal practitioner: Mr. A. K. Rout & Mrs. P. Nayak, Advocates.

- Versus -

1. Union of India and others. ... Respondents.

By legal practitioner : Mr. U. B. Mohapatra, ASC (Res. 1 to 5)

and

Mr. C. Ananda Rao,
Mr. S. K. Behera,
Mr. A. Tripathy,
Advocates for Res. Nos. 6 to 11.

.....
O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :-

Armed Forces Garrison Engineer at Gopalpur-on-
Sea of Orissa issued advertisement under Annexure-5 to this
Original Application inviting applications for filling up
of six posts of Chowkidar (of which three for general, one for
SC, one for ST and one for OBC) but, practically, they have filled

up all the six posts by general community candidates (i.e. Respondents 6 to 11) and in the said premises, the Applicant (who was a candidate in the recruitment process, for the posts in question) has branded the said action of the Respondent Department to be an action which violates the constitutional mandate of reservation for SC/ST and, it has further been alleged in this Original Application that even though he had reported before the selecting authority, on the date and time fixed for interview, he was not allowed to participate in the interview on the ground that no SC and ST candidates are to be allowed to face the selection. Hence he has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- "8.1. to direct the Respondent Nos.1 to 5 to quash the appointment orders of Respondent Nos.6 to 11 pursuant to Annexure-5 and consider the appointment of the Applicant reserved category of SC and ST in pursuance of the said advertisement;
- 8.2. to grant cost of the application in the best interest of justice."

2. By filing counter, the departmental Respondents of Chowkidar, have disclosed that although four number of posts, of which one was reserved for SC; 1 was for OBC and two were kept open for General category, were advertised in the Employment News dated 11-17 December, 1999 to be filled up, the said advertisement was cancelled and a fresh advertisement inviting applications for the post of six chowkidars was published in the Employment News dated 12-18 February, 2000 by the Respondent No.5, as per the instructions of the Hqrs, in

which three posts were kept open for General candidates; one post was kept reserved for SC; one post for ST and one post for OBC candidates. Accordingly, call letters were issued to all the candidates (those who had applied pursuant to the advertisement) including to the Applicant. However, prior to the interview, as per the instructions given under Annexure-R/2 dated 9.2.2000 of the Chief Engineer, the posts were recalculated (according to 200 point roster) on the point of reservation and, on recalculation, it was seen that no vacancy exists for SC and ST category and, accordingly, fresh advertisement/corrigendum to earlier advertisement was issued in the Employment News dated 1-7-April, 2000 showing therein that out of six posts as advertised earlier only one post was kept reserved for OBC candidates. Since before publication of the said amendment, a large number of applications were received (in response to advertisement published earlier) it was decided to issue call letters to all the candidates who had applied in response to the advertisement dated 12-18 February, 2000. It has been disclosed in the counter that call letters were issued on 2-3-2000 and the same were despatched on 4.3.2000. It was specifically mentioned in the counter that all the persons irrespective of the candidates such as SC/ST/OBC, were allowed to attend the interview held on 14/15.3.2000 and according to the marks secured by the candidates, a merit list was drawn and appointments were given and that since the Applicant did not appear in the interview on the date fixed, absent mark was given as against his name by the

selecting authority; who conducted the interview. In support of this, they have also produced the attendance sheet showing absence mark as against the name of the applicant.

3. Private Respondents (those who were selected and appointed) have also filed their counter; wherein, while supporting the stand taken by the Respondent Department in their Counter, they have stated that since they have been selected through open competitive examination, they should not be thrown out of employment.

4. Having heard learned counsel for both sides, and having perused the materials placed on record, it is seen that the plea of the Applicant that no SC/ST candidates were allowed to face the selection is not at all a fact; because, as is evident from the attendance sheet, many SC/ST candidates faced the selection/interview and they have also been awarded marks but, as against the name of the Applicant 'absent' mark has been given. From this it is crystal clear that the Applicant did not face the selection test on the date fixed for interview.

If it is accepted that the Applicant, being a SC candidate, was not allowed to compete along with general candidates, then the question arises as to what action the Applicant had taken thereafter. It was open for him to immediately approach the higher authority in the Department. But no materials have been placed on record to substantiate his allegation that he was not allowed to face the selection. With regard to his allegation that no reserved candidates were selected/appointed in the post of Chowkidar, it is to be noted

here that since the interview was a competitive one, unless a reserved community candidate, comes within the top six candidates, according to their merit, there were no question of giving them appointment. Thus, both the allegations of the Applicant, as raised in this case, are not sustainable.

However, since the Applicant did not appear the test, he has no right to either challenge the selection or claim that he should be selected.

Further, as regards the reservation of the post, it is worth to be noted here that Court has no power to determine which post is to be filled up and as to by which category. The Departmental authorities are the best person to decide the same. If there is any deviation of the reservation roster, then it is for the higher authority to look into the same.

Furthermore, the Applicant has alleged that pursuant to Annexure-5, the selection was made; which is also not at all a fact.

5. Learned counsel for the Applicant has relied upon certain judgments of the Hon'ble Apex Court; wherein it has been held that if the process of selection is bad, then the appointees have right to claim opportunity. The Applicant having not pointed out violation of any selection/recruitment process, those judgments have got no bearing on this case. In the instant case, the basic question comes for consideration as to whether in the present form this application is maintainable especially when the Applicant did not appear in

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the interview. The Applicant having not faced the selection, he is estopped to challenge the selection and the consequential appointment.

6. Apart from the above, law is well settled that the Tribunal has no power to decide a matter by way of Public interest litigation and on that point alone, this case is not maintainable.

7. In the result, we find no merit in this Original Application; which is accordingly dismissed. No costs.


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)