

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACKO.A.NO. 563 OF 2000
Cuttack, this the 15th day of February, 2005

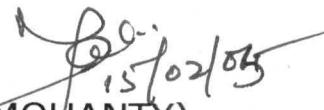
Sri S.Ganapathy Rao and others Applicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(M.R.MOHANTY)
JUDICIAL MEMBER
(B.N.SOM)
VICE-CHAIRMAN

14

CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH,CUTTACK

O.A.NO. 563 OF 2000
Cuttack, this the 15th day of February, 2005

CORAM:

**HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, JUDICIAL MEMBER**

.....

1. S.Ganapathi Rao, aged about 29 years, son of S.Suryanarayana, At Hanuman Market, Sunabeda 1, P.O./PS-Sunabeda, District:Koraput 763 001 (Orissa).
2. Ratnakar Maharana, aged about 28 years, son of Trinath Maharana, C/o P.K.Moharana, At Naval Armament Depot, P.O/PS Sunabeda 4, District Koraput 763 004 (Orissa).
3. Dukhabandhu Swain, aged about 30 years, son of late Harmohan Swain, Qr.No.P-37/1, NAD Colony, Sunabeda 4, District Koraput (Orissa).
4. Simanchal Mahankudo, aged about 35 years, son of late Radhakrishna Mohankudo, New Street (1st Lane), At/PO Jeypore, District Koraput (Orissa).

..... **Applicants**

Advocate for the applicant - M/s. B.Mohanty-1,
S.Patra, P.K.Majhee

Vrs.

1. Union of India, represented by its Secretary, Ministry of Defence, South Block, New Delhi.
2. Flag Officer, Commanding-in-Chief, Eastern Naval Command, Naval Base, Visakhapatnam, Andhra Pradesh.
3. Deputy General Manager, Naval Armament Depot, Sunabeda, P.O/PS Sunabeda, Dist.Koraput.
4. Sri Kuresh Patra.
5. Sri Duryodhan Reddy
6. Sri Ranjit Kumar Mandal
7. Sri Balaji Panigrahi
8. Sri Tripnath Pradhan
9. Sri Kapil Kumar Bhatta

2

10. Sri Madan Oram
11. Sri Baburam Badanayak
12. Sri S.S.Mohiddin
13. Sri Niranjan Nayak
14. Sri Dillip Kumar Panda
15. Sri Laxmikanta Mohankudo
16. Sri Jagadish Hial
17. Sri T.S.Prasanta
18. Sri Dasarathi Patia
19. Sri Gupta Dhisari
20. Sri Pratap Kumar Patro
21. Sri Bhusana Khora
22. Sri Prem Narayan Thakur
23. Sri Pradipta Kumar Pati
24. Sri Giridhar Gorada
25. Sri Adya Pangi
26. Sri Dasarathi Pujari
27. Sl.Nos. 4 to 26 are Care of Deputy General Manager,
Naval Armament Depot, Sunabeda, Dist.Koraput.

..... Respondents

Advocate for Respondents

-Mr.U.B.Mohapatra
Sr.CGSC

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri S.Ganapathi Rao and three others have filed this Original Application challenging the select list of candidates for recruitment to the post of Unskilled Labourers for in Naval Armament Depot, Sunabeda, published in THE NEW INDIAN EXPRESS, BHUBANESWAR, dated 25.10.2000 (Annexure 3) on the ground that the selection was made in violation of the law relating to reservation.

2

2. The facts of the case, in a nutshell, are that names of the applicants were sponsored by the District Employment Exchange, Koraput, on a requisition sent to that effect by the Respondents. It is the case of the applicants that the Respondents in the requisition had indicated six posts being reserved for OBC category. It is also disclosed that 919 candidates were sponsored by the Employment Exchange, out of which 37 candidates were selected after written test, physical test and trade test, community-wise break-up of those candidates being 15 under General Category, 7 each under SC and OBC categories, and 8 under ST category. The grievance of the applicants is that even after preparation of the select list, no appointment orders were issued and the select list was kept in cold storage to make it ineffective. Thereafter the matter was taken by some of the candidates in OA No.482 of 1993 before this Tribunal which was dismissed on 16.11.1999. After this, the Respondents held a fresh selection subject to the result of the writ petition pending before the Hon'ble Orissa High Court in OJC No. 14983 of 1999 in which the present applicants were not parties. Ultimately, a select list, as referred to above, was published on 25.10.2000, in which the names of Respondents 4 to 26 appeared. They have also alleged that even though

selection was done in the year 2000, no new names were called for and on the basis of the very same names which were received from the District Employment Exchange way back in 1994 (26.8.1994) the selection was carried out in the year 2000. The Respondents had also constituted new Board for selection to serve the purpose. The applicants have given a list of candidates whose parents/relations were working either in M.E.S. at Sunabeda or at Naval Armament Depot, Sunabeda, to show that the selection was not free from bias. They have further stated that whereas the Respondent-Department had approached the Employment Exchange to fill up 23 posts, out of which six were to be filled up by OBC candidates and two by ST category candidates, in the final select list they had included names of six ST category candidates and only two OBC category candidates, thus wrongly depriving four posts to the OBC category candidates. It is the case of the applicants that the Respondent-Department did not have right to deviate from the requisition in the advertisement and to vary the reservation quota to suit their purpose.

3. The Respondents have resisted the Original Application on all counts. They have rebutted all the allegations put forth by the applicants, stating that the Selection Board originally

19

constituted had to be reconstituted on receipt of some complaints which were found to be valid. The Selection Board had also to be reconstituted as the earlier Selection Board constituted did not follow the instructions contained in Government of India, Ministry of Defence, I.D.No.24(2)/9/d-Appts., dated 26.10.1990, , with regard to nominating a member from the Minority Community in the Board and also to nominate a member from SC/ST community all through the sittings of the Selection Board. One of the candidates filed OA No. 482 of 1995 before this tribunal, and the Tribunal, while disposing of the O.A. on 16.11.1999, directed the Respondent-Department to carry out a fresh process of selection in which the candidates sponsored only by the Employment Exchange were to be considered and that the process of selection was to be completed within a period of 120 days from the date of receipt of copy of the order. Some of the applicants in this O.A. also filed a writ petition before the Hon'ble High Court of Orissa in OJC No.14983 of 1999 and obtained an interim order on 30.11.2000 to the effect that any appointment made to the posts in question would be subject to the result of the writ application. It is only after receipt of this order that the reconstituted Selection Board carried out the selection and on the recommendation of the Selection Board, names of the

successful candidates were notified in the newspaper, as referred to earlier. The Respondent-Department, answering the specific allegation that they had violated the reservation policy of the Government, have submitted that the Government had introduced a new reservation policy with effect from 2.7.1997 by virtue of which the vacancy based communal roster was replaced by post-based communal roster, as a result of which the community composition for 23 posts for which the selection was to be made underwent a change. According to the post-based roster for recruitment to 23 posts following 200-point roster, the number of posts available for OBC community was two and for the ST community the number became six.

4. We have heard the learned counsel for the parties and have perused the records placed before us.

5. The grievance ventilated by the applicants is that the select list under Annexure A/3 should be quashed because it was illegal on the ground that the Respondents had violated the law relating to reservation and thereby contravened the provisions of Articles 14 and 16 of the Constitution. They have submitted both in their pleadings as well as during oral hearing that the Respondents having notified the number of vacancies to the

District Employment Exchange as six for the OBC and two for the ST, could not have changed it subsequently. They have also argued that the law is well established that advertisement must be made in newspaper widely along with requisition to the Employment Exchange. In this case, no circulation having been made in the newspaper the entire selection process stood vitiated.

6. We have considered the objections raised by the applicants. But we are unable to agree with the contention of the applicant. The requisition was sent to the Employment Exchange on 26.8.1994 and at that point time the decision of the Hon'ble Supreme Court in *The Excise Superintendent, Malkamapatnam, Krishna District, Andhra Pradesh v. K.B.N. Visweshwara Rao and others, 1996 (7) SUPREME 201*, had not come into force and therefore, it would be incorrect to say that under the law the Respondent-Department was obliged to put the vacancy notification in the newspaper.

7. Regarding the change in the community-wise distribution of posts from 1994 to 2002, the Respondent-Department has explained that the composition had to undergo change because of the law regarding reservation having undergone change with

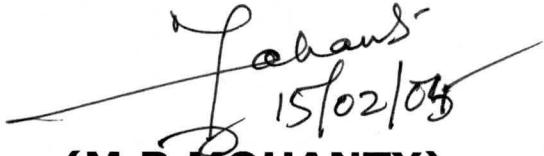
2

effect from 2.7.1997 when the vacancy-based roster was replaced by post-based roster and direction was given to recruiting authorities to adjudge the surplus/deficiency in community representation in the 200-point roster against the future vacancies. The Respondent-Department has argued that the number of posts had remained the same, but the composition of communities had to undergo change in 2000 because of the change in the law with effect from July 1997. The Respondent-Department has also explained that under the normal circumstances when the selection could not be completed soon after the names of the candidates were received from the Employment Exchange in 1994 due to administrative reasons, fresh notification should have been made. But that procedure could not be followed because of the direction of the Tribunal in their order dated 16.11.1999 in OA No. 482 of 1995 that fresh process of selection should only include persons/candidates who were earlier sponsored by the Employment Exchange. In the circumstances, the Respondent-Department had carried out selection in the year 2000 from among the candidates who were originally sponsored by the District Employment Exchange and there was no change in the number of posts to be filled up. The Respondents have, therefore, submitted that they have not deviated from the

requisition for filling up 23 posts. But as the law of the land providing reservation underwent change, they could not have ignored the new reservation policy on any ground.

8. The sole challenge against the select list made by the applicants is that it has been drawn up in violation of the reservation policy. We are unable to accept this position. The Government, in pursuance of the decision of the Hon'ble Supreme Court, having changed the reservation policy and introduced the system of post-based roster in place of vacancy-based roster, it was not open to the Respondent-Department to follow the old roster existing prior to 2.7.1997. It is also admitted that they had originally sent the requisition for filling up 23 posts of Unskilled Labourers. It is also admitted that the number of posts which were to be filled up through the selection process remained the same even in 2000.

9. In view of our above discussions, we see no merit in this Original Application which is accordingly dismissed. No costs.


(M.R.MOHANTY)
JUDICIAL MEMBER


(B.N.SOM)
VICE-CHAIRMAN