

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 138 of 2003
Cuttack, this the *22nd* day of *May*, 2005

CORAM :

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

AND

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

.....

Shri Kishore Mohan Sahu aged about 26 years son of Shri
Bhagirathi Sahu at/P.O. Remuna, Dist. Balasore.

..... Applicant

By the Advocates

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M/s. R.K.Prusty, B.C.Majhi,
D.Das, A.K.Mohara.

VERSUS

1. Union of India represented through Director General Research and Development and Secretary to Govt. of India, Ministry of Defence Department of Defence Research and Development South Block, New Delhi-110011.
2. Director General, Research and Development and Secretary to Govt. of India, Ministry of Defence, Department of Defence Research and Development, South Block, New Delhi-110011.
3. Director and commandant Proof and Experimental Establishment, Government of India, Ministry of Defence, Research and Development Organisation, Proof and Experimental Establishment, P.O. Chandipur, Dist. Balasore- 756025.
4. Employment Officer, District Employment Exchange, Balasore.
5. Tapan Kumar Barik s/o. Madhusudan Barik, Choudhuri Sahi, P.O. Motiganj, Balasore.

..... Respondents

By the Advocate

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M/s. A.Kanungo(R-1 to 3),
T.Dash (R-4)

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN:

This O.A. has been filed by Shri Kishor Mohan Sahu challenging the appointment of Respondent No.5 to the post of Technician'A' (Welder) in OBC category.

2. The case of the applicant in short is that the Respondents had published an employment notice on 2.9.2000 to fill up two vacant posts of Technician'A' (Welder/Electrical) one unreserved and one reserved for OBC. The name of the applicant was sponsored by Respondent No.4 as OBC. Respondent No.5 also applied for the post(reserved for OBC candidates) in response to the open advertisement without submitting OBC certificate along with the application. It is further alleged by the applicant that the said Respondent No.5 obtained the caste certificate from Tahasildar, Balasore and submitted the same before Respondent No.3 eight days before the date of issuing appointment to him. It is, further, submitted by the applicant that the Respondents in their call letter to the candidates had asked them to bring all certificates including caste certificate, if any, as well as the testimonials like, marks-sheet(s) in original. In spite of that condition, the Respondent No.3 had illegally allowed Respondent No.5 to appear in the test as a reserve candidate and ultimately selected him ^{that} and goes to prove that Respondent No.5 was shown undue favour. The applicant has further submitted that he has obtained a clarification from the Ministry of Personnel and Public Grievances and Pensions that production of caste

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certificate is essential for establishing the claim of a candidate for applying/to be considered for appointment against any reserve vacancy, but for reasons best known to the Respondents, they had violated this basic rule in the matter of recruitment of reserve category candidate.

3. The Respondents, in their reply in counter, have not disputed the facts of the case. They have submitted that Respondent No.5 had submitted a xerox copy of caste certificate notifying that he belonged to Socially and Educationally Backward Classes and that he belongs to 'Bhandari' community. They have further submitted that the caste 'Bhandari' is also included in entry No.18 of Mandal list and was later on identified as OBC under the Central list for the purpose of reservation in Central Government employment. They have also admitted that Respondent No.5 was allowed to appear in the test/interview conducted on 30.3.01 by the competent authority after submission of a written undertaking relating to production of the OBC certificate, if he was selected for the appointment. They have also submitted that the selection of Respondent No.5 was, however, made on merit amongst the candidates belonging to OBC category.

4. We have heard the Ld. Counsel for the rival parties and have perused the records placed before us.

5. The undisputed fact of the case is that the Respondent No.5 appeared for the interview/recruitment test claiming benefit under reservation when his caste was not enlisted as OBC for the purpose of employment in Central Govt.

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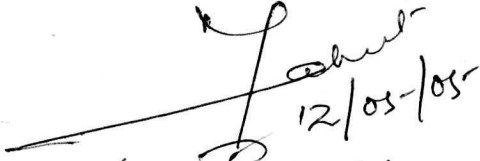
On the other hand, the applicant was an OBC, and, among the OBC candidates, he had secured the highest marks, and, had the official Respondents not allowed Respondent No.5 to appear in the test as OBC candidate, the applicant would have been selected. After perusing the records of the selection test/ viva-voce which were produced before us by the Respondents, we find that had the Respondent No.5 not been declared a candidate under OBC category in Central list and had he had contested for a post in the unreserved category, in that event, on the basis of his performance in the written test and viva-voce, he would not have been selected for the post as several other general category candidates with higher scores were available in the list. The question of law that arises here is whether a candidate can claim the benefit of reservation or can claim the benefit of Constitutional guarantee under reservation before he is certified by the authorised person to be eligible to be treated as a reserve category citizen. The obvious answer to this question will always be in the negative. The Respondent No.5 was declared belonging to OBC only in the month of September, 2001, and, therefore, he had no right to claim benefit under OBC category for the post of Technician 'A' (Welder) on 22.9.2000, i.e., the last date fixed for receipt of applications from the eligible candidates. We would like to reiterate here that Respondent No.5 was no doubt eligible to apply for the post of Technician 'A' (Welder), but he was not eligible to apply for that post as OBC candidate. It was, therefore, illegal and impermissible to treat his application


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under OBC category as the Respondents did not have the authority under law to determine caste of any citizen of the country.

Clearly, therefore, they had violated the reservation rules in the matter of selection for the post of Technician 'A' (Welder), and, thereby, had violated the selection process. We have, therefore, no hesitation to declare the selection of Respondent No.5 as Technician 'A' (Welder) under OBC category as null and void and also declare that the applicant having scored the highest marks among the OBC candidates, he is entitled to the offer ~~to~~^{of} employment under reserve category quota to the post of Technician 'A'. While parting with this case, we find that Respondent No.5 has been working for over three years as Technician 'A', since 14.9.01. He might have become overaged for fresh employment under the Central Government. In the circumstances, the Respondents may consider his case for granting him an alternative employment against a reserve quota vacancy as may be available in the organization subject to his fulfilling the qualifications for the post.

6. Accordingly, the O.A. succeeds and the Respondents are directed to issue offer of appointment to the applicant after completing the necessary formalities within a period of 120 days from the date of receipt of this order. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SGM)
VICE-CHAIRMAN

KUMAR