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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH,CUTTACK

O.A.NO. 523 OF 2004

Cuttack, this the 22nd day of June, 2005

Shri Ashok Kumar Patel 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? Yes

(M.R.MOHANTY)
JUDICIAL MEMBER

(B.N.SOM)
VICE-CHAIRMAN

22/06/05

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH,CUTTACK

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Cuttack, this the 22nd day of June, 2005

CORAM:

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

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Shri Ashok Kumar Patel, aged about 47 years, son of Artatrana Patel, Village/PO Gambharidihi, Dist. Sundargarh, at present working as Deputy Superintending Archaeologist in Archaeological Survey of India, Bhubaneswar Circle, 153 VIP Area, Nayapalli, P.O/PS-Nayapalli, Bhubaneswar 15, Dist. Khurda

..... Applicant

Advocates for applicant - M/s K.C.Kanungo, S.Behera & C.Padhi.

1. Union of India, represented through Secretary to Government of India in the Ministry of Human Resource and Development, Sastry Bhawan, New Delhi.
2. Director General, Archaeological Survey of India, Janpath, New Delhi 11.
3. Secretary, Union Public Service Commission, Dholpur House, Sahajahan Road, New Delhi

..... Respondents

Advocate for the Respondents - Mr.B.Dash, AGSC.

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O R D E R

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SHRI B.N.SOM, VICE-CHAIRMAN

Shri Ashok Kumar Patel has filed this Original Application assailing the inaction of Respondent No.3 for not calling him to appear in the interview for recruitment to four posts of Superintending Archaeologist in Archaeological Survey of India, Ministry of Human Resource Development, Department of Culture. He has challenged the action of Respondent No.3 as discriminatory in the matter of public employment. He has, therefore, approached the Tribunal to hold that the applicant was legally eligible to appear at the test/personal interview for the post and direct Respondent No.3 to consider his candidature for the said post in terms of the notification at Annexure A/1.

2. Shorn of details, the factual matrix of the case is as follows. The applicant, who is working as Deputy Superintending Archaeologist, had applied for one of the four posts of Superintending Archaeologist reserved for OBC candidates in the Respondent-Department; having Master's Degree in Archaeology and published research work in terms of the notification made by Respondent No.3 in Employment News, Advertisement No.24 (Annexure A/1). He had given details of research work which has been published in support of his claim. He had also given evidence of his belonging to OBC category and his entitlement for the concessions available to such

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candidates. His grievance is that he did not get call letter, as a result of which his legitimate expectation to appear in a test for his upward career advancement was shattered. On being informed that he was not being called for the interview, he had submitted a representation to the office of Respondent No.3 on 21.7.2004 (Annexure A/9) urging upon the latter to consider his case again, but that was of no avail. He has, in the circumstances, filed this O.A. challenging the action of Respondent No.3 as contrary to the conditions of selection laid down in the Employment News referred to above.

3. Respondent No.3 has contested the application by filing a detailed counter, to which a rejoinder was filed by the applicant on 21.11.2004. In reply to the rejoinder, respondent No.3 filed a detailed reply on 26.4.2005 serving a copy on the applicant. The applicant filed his reply on 10.5.2005 and raised several objections to the reply to the rejoinder dated 26.4.2005. The applicant has also stated some more facts in support of the plea taken in the application.

4. Before we discuss the merit of the issues raised in the O.A. it is necessary to consider whether Respondent No.3 was entitled to file a reply to the rejoinder.

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5. The objection raised in this regard is that Respondent No.3 had filed the reply to rejoinder when the matter remained as part heard on two occasions. Secondly, that in the said reply the Respondent No.3 having taken a new stand the acceptance of the said document will lead to changing the basic nature and character of the counter.

6. Pointing out the reply of Respondent No.3 in paragraphs 4.2 and 4.3 of the original counter filed on 29.9.2004, the learned counsel for the applicant submitted that the stand of Respondent No.3 underwent a change by sub-paragraph 3 of paragraph 3 of the reply. In the first instance, ~~when~~ the stand of Respondent No.3 was that the candidature of the applicant was not considered because he could not furnish evidence in respect of his published research work equivalent to Doctorate Degree, but in the subsequent reply to the rejoinder, Respondent No.3 has taken a new position that the applicant did not possess essential qualification for consideration. On these ~~other~~ grounds, the learned counsel for the applicant, during oral arguments, repeatedly canvassed before us that under the Code of Civil Procedure the Respondent No.3 was not entitled to make further pleadings in the midst of the regular hearing.

7. We have carefully considered the reply dated 10.5.2005 filed by the applicant and the objection raised to the acceptance of the reply filed on

behalf of Respondent No.3. The pleadings in the matter were completed on 25.11.2004 when it was ordered for listing the matter for final hearing after showing it in the ready list. Thereafter, the matter was listed on 16.2.2005 for hearing and then the first hearing took place on 21.3.2005 followed by hearing on 21.4.2005 when the matter was adjourned to 27.4.2005 for further hearing. In the meantime, on 26.4.2005 the Respondent No.3 filed a copy of the reply to the rejoinder without seeking leave of the Court. It is against this unilateral action taken by respondent No.3 that the applicant has filed his objection in reply and also vehemently objected to it during final hearing. Having regard to the objection raised by the applicant and that the reply to the rejoinder having been filed by Respondent No.3 without obtaining leave of this Court, we decide not to treat it as a part of formal pleadings and proceed to adjudicate the matter on the basis of the counter filed in reply and the pleadings made before us during the oral argument.

8. The case of the Respondents is that Union Public Service Commission is a Constitutional body established under Articles 315 to 323 of the Constitution of India and ^{are} ~~is~~ vested with the powers to frame their own method/manner for all recruitments under which a reasonable classification of various applicants on the basis of their qualification and experience is permissible. By referring to various judicial pronouncements, they have

buttressed their argument that unless there is blatantly frivolous, or absurd, or impracticable, or unfair, or extraneous having no nexus with the object in the short-listing criteria , no Court/Tribunal can set it aside and force its own view. They have also relied on the Apex Court decision to the same effect. With regard to the merit of the case of the applicant, they have stated that it is not disputed that he was an OBC candidate and he was entitled to the reservation benefits guaranteed under law. The fact of the matter is that they had, in response to the advertisement referred to earlier, received 169 applications for selection to four posts including one reserved for OBC. Accordingly, as per their established procedure , they resorted to short-listing of the candidates by means of which 11 candidates fulfilling the short-listing criteria were called for the interview. The short-listing criteria, they adopted, have been disclosed in the counter as follows:

“Essential Qualifications (i) and (ii) mentioned above and Doctorate Degree awarded in the prescribed subjects, before the normal closing date of application. The candidates not possessing Ph.D.Degree before the closing date were not shortlisted for the interview.”

They have stated that as the applicant did not possess Ph.D.Degree or was not awarded Doctorate Degree in the prescribed subject before the normal closing date of application, he could not be within the list of first 15 candidates. In reply to paragraphs 4.2 and 4.3 of the O.A. they have stated as follows:

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“.....The applicant was not possessing Ph.D.Degree on the normal closing date. Ph.D.degree on normal closing date was one of the requirement for being shortlisted for interview as has been pointed out in Brief facts of the case. As he was not meeting the shortlisting criteria, he was not called for interview.”

They have further stated in the said counter that the representation dated 21.7.2004 submitted by the applicant was duly considered by them before the candidates were called for interview but the same was rejected being devoid of merit. In other words, the plea of the Respondent No.3 is that the applicant having fallen short of the criteria for short-listing was not called for interview.

9. On the other hand, the applicant's grievance is that Respondent No.3 by way of short-listing had in fact altered the essential conditions given in the statutory recruitment rule and thereby had gone beyond their jurisdiction. Relying on the decision of the Apex Court in the case of *M.P. Public Service Commission v. Navnit Kumar Potdar and another*, 1994 (5) SLR 273, the learned counsel for the applicant submitted that the Commission in short-listing candidates for interview cannot be allowed to change the criteria prescribed in the Rules. The Apex Court had held:

“.....This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus.....”

It would be, therefore, in the fitness of things to see whether Respondent No.3 had altered the provisions of the Recruitment Rules in fixing its criteria

for short-listing. We, therefore, quote the Recruitment Rules for direct recruitment for the post of Superintending Archaeologist.

- “i) At least Second Class Master’s degree of a recognized University or equivalent in Indian History/Archaeology/anthropology with knowledge of Stone Age Archaeology/Geology;
- ii) Diploma in Archaeology from the Archaeological Survey of India with three years field experience, OR Field Experience of at least five years in Archaeology and knowledge of Monuments and Antiquities;
- iii) Doctorate Degree in any of the above subjects or equivalent published research work (evidence to be furnished).”

From the perusal of the Recruitment Rules it appears that the Recruitment Rules have set three essential qualifications for the direct recruit candidates.

The first condition as given in essential qualification (i) is Second Class Master’s degree in the given subjects, and the second condition i.e., essential qualification (ii) is Diploma in Archaeology, or field experience of at least five years for the departmental candidates in lieu of Diploma in Archaeology, and, lastly, essential qualification (iii) either Doctorate Degree in any of the given subjects or equivalent published research work. It is, therefore, clear that in the matter of essential conditions, all candidates must possess at least a 2nd Class Master’s Degree of a recognized University or equivalent in the given subjects. However, in the matter of the other two essential qualifications, the recruitment rules have recognized two different classes. In each of these groups in respect of E.Q.(ii) one group is Diploma

holders in Archaeology from Archaeological Survey of India with 3 years experience and the other Group who do not have Diploma in Archaeology but who have field experience of minimum 5 years in Archaeology and knowledge of monuments and antiquities. Then in respect of E.Q.(iii) also there are two groups recognized. In one group are those who possess doctorate Degree in any of the given subjects and another group who do not possess Doctorate Degree but have equivalent published research work. For the second category, the candidates are asked to produce evidence to prove that they have published research work which is equivalent to Doctorate Degree. From the reply given in the counter as also submitted before us by the learned Additional Standing Counsel, it has been stated that in short-listing of the candidates, Respondent No.3 had limited the number of candidates to be called for interview to those who possess E.Q.(i), E.Q.(ii) and first group of E.Q.(iii), i.e., only those who have obtained Doctorate Degree in any of the given subjects. The point made out by the learned Additional Standing Counsel before us is that the object of short-listing is to fix the limit of the number of candidates who should be called for interview so that personality and merit of the persons who are called for interview are properly assessed and evaluated and that consideration of this nature has been found reasonable by the Apex Court. In this case, by deciding to call only such candidates as had obtained Ph.D.Degree, Respondent No.3

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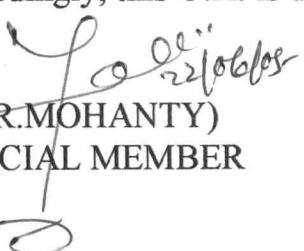
was able to get 15 candidates to interview for filling up 4 posts. As a result, it was not found expedient for them to include the candidates who had no Doctorate degree but had equivalent research work.

10. We find that in the Recruitment Rules for the purpose of E.Q.(ii) and E.Q.(iii) two distinguished groups have been identified and have been given place for consideration. As these groupings have been done on rational basis and they are specific and distinguishable in nature, we hold that the classifications of groups made in E.Q.(ii) and E.Q.(iii) are reasonable having intelligible differentia and having nexus to the object sought to be achieved by such classification. As the classification of groups in E.Q.(iii), i.e., group having formal Doctorate Degree conferred by the University and the other group who have to their credit published research work recognized as equivalent and such a distinction having not been called in question ever either as unreasonable or otherwise, it cannot be called in question now by the applicant in this case. Respondent No.3 had consciously decided to fix the limit of the candidates to Ph.D.Degree holders and by that method they could get 15 candidates for selection of four candidates. But the applicant was not called, being not a Ph.D.Degree holder. We see no infirmity in this process of short-listing. It is also submitted that the applicant had submitted a representation to Respondent No.3 on 21.7.2004 (Annexure A/9). In that representation he

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himself had gone on record to say, "I have fulfilled all the criteria put by the U.P.S.C. for the selection of the post except Ph.D....." As the applicant himself had admitted that he did not possess Ph.D.Degree and as it has been disclosed by the Respondent No.3 in the counter that they had short-listed only the candidates who had possessed Ph.D.Degree, the allegation of discrimination appears to be without any basis because no one not having Ph.D.Degree was called for interview. Looking at the matter differently it can be argued that even if the applicant could have produced a certificate that his research publications were equivalent to Doctorate degree his case would have remained outside the short-listing because the criterion adopted for this purpose was possession of Ph.D.Degree.

11. In view of the discussions made above, we have no hesitation to hold that the allegations brought by the applicant that the selection was made by giving a goby to the basic provisions of the Recruitment Rules or he was discriminated against do not stand scrutiny of the facts of the case. As the Recruitment Rules themselves recognize different groups in determining essential qualifications, the allegation of discrimination has no basis. Accordingly, this O.A. is disposed of being devoid of merit. No costs.


(M.R.MOHANTY)
JUDICIAL MEMBER


(B.N.SOM)
VICE-CHAIRMAN