

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.869 OF 2004
CUTTACK THIS THE 09th DAY OF December 2005

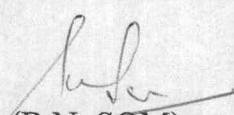
PRASANTA KUAMR BEHERA ... APPLICANT

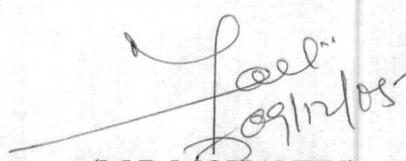
-VERSUS-

UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

7. Whether it be referred to reporters or not ? *yes*
8. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *yes*


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK**

ORIGINAL APPLICATION NO.869 OF 2004
CUTTACK THIS THE 09th DAY OF December 2005

CORAM:

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

...

PRASANTA KUMAR BEHERA,24 years,
Son of Benudhar Behera, Vill.Sankundura,
Po. Sarada, PS:Gop, Dist.Puri.

...Applicant

By the Advocates : M/s. B.P.Satpathy, A.Tripathy,
B.K.Nayak, Advocates.

-VERSUS-

1. Deputy Director, Jawahar Navodaya, Vidyalaya Samiti,
At/Po- Bhopal, State-Madhyapradesh.
2. Principal, Jawahar Navodaya Vidyalaya,
Erbanga, PO. Birtung, Dist.Puri.

...Respondents

By the Advocates : Mr.U.B.Mohapatra, Sr.St.Counsel.



O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Grievance of the Applicant is that although he has been continuing in the Jawahar Navodaya Vidyalaya at Erbanga/Birtang of Puri District, since 19-01-2002, as a Casual Gr. D employee/Mess Helper, instead of regularizing his services (as against the sanctioned post of a Mess Helper or that of a Laboratory Attendant) steps are being taken (by the Respondents) to fill-up the said posts by outsiders. The further grievance of the Applicant is that the Applicant although had applied (under Annexure-6) to face the recruitment interview/test (scheduled to take place on 22-10-2004), he has not been permitted to face the said interview/test; merely because his name had not been sponsored by the Employment Exchange. Therefore, by filing the present Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant has sought for the following relief(s):-

- “(i) Let the process of selection initiated by the Respondent Nos. 1&2 for selection of Laboratory Attendant and Mess Helper be declared as illegal;
- (ii) Let the Respondents be directed to accept the application of applicant as submitted vide Annexure-6 to the post of Laboratory Attendant along with others;
- (iii) Let the reservation made in respect of the single post of Mess Helper be declared as illegal;

- (iv) Let the applicant be allowed to participate in the interview for the post of Mess Helper along with others;
- (v) Let the Respondents be directed to regularize the services of the Applicant in the post of Mess Helper without going for fresh selection".

2. Respondents, by filing counter, have taken the stand that the Applicant was engaged on contract basis as Mess Helper from 06.11.2002 to 30.04.2003, 03.07.2003 to 03.10.2003 and 24.10.2003 to 23.12.2003 and, after the expiry of the contractual period, the Applicant continued on daily wage basis till 31.08.2004 and he is not in employment w.e.f. 01.09.2004. It has been pointed out that one post of L.D.C. and four posts of Gr. D were sanctioned by the NVS as per the order dated 07.01.2004 (Annexure-R/I) and as per the roster point the post of Mess Helper was meant to be filled up by a person from ST community and the post of Laboratory Attendant was to be filled up by a person from OBC category. It is the case of the Respondents that the roster point is maintained, by the Deputy Director of NVS, on regional basis. It has also been disclosed by the Respondents that since, as per the Rules, no candidate, other than those sponsored by the Employment Exchange, are available to be considered in the recruitment process, and the name of the Applicant, having not been sponsored by the Employment Exchange; he is not eligible/entitled to be considered in the recruitment process. However, it has been submitted by the Respondents

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that, although the Applicant is an OBC candidate, due to non-inclusion of his name in OBC category in the employment exchange, his name could not be sponsored by the Employment Exchange for the post of Laboratory Attendant. It has been submitted by the Respondents that had the name of Applicant been sponsored by Employment Exchange, he would have been considered for the post of Laboratory Attendant; which was reserved for OBC persons.

3. At the time of admission of this Original Application, on 20-10-2004, considering the submissions made by the parties, while issuing notices to the Respondents, as an interim measure, the Respondents were directed not to disengage the Applicant, without leave of this Tribunal. It was further directed, as an interim measure, to permit the Applicant to face the interview for selection to the post of Mess Helper/Laboratory Attendant and to keep the result of the said interview in a sealed cover.

4. We have heard learned counsel appearing for both sides and perused the materials placed on record. Learned counsel appearing for the Applicant has submitted that the entire exercise made by the Respondents is against the judge-made-laws. The Respondent-Department ought not to have filled-up the posts only on the basis of the names received from the Employment Exchange and that, instead of confining the recruitment within the candidates sponsored by Employment Exchange, the authorities ought to have invited applications from open market by

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making advertisement in the local news papers etc. Having not done so, the Respondents have violated the decisions rendered by the Hon'ble Apex Court with regard to the manner of invitation of applications etc. Learned counsel appearing for the Applicant further submitted that since the Applicant has been continuing on daily wage basis under the Respondents, his case ought to have received due consideration (for regularization) even before sending requisition to the Employment Exchange. It has been alleged that only to deny regularization of services of Applicant, such a step-motherly attitude has been taken/shown; which is not sustainable in the eye of law.

5. On the other hand, learned Senior Standing Counsel appearing for the Respondents submitted that the Respondents have acted according to the Rules prevalent in the Department itself. Since Rules provide for considering the names of the candidates received from Employment Exchange, there was nothing wrong on the action of the Respondents in refusing to consider the case of the Applicant; his name having not been sponsored by the Employment Exchange.

6. Having heard the learned counsel appearing for the parties and upon perusal of the materials placed on record, it is to be noted here that the Directive Principles; of State Policy reflect the hopes and aspirations of the people. Although the provisions of this part are not enforceable by any court, the principles laid down therein are

nevertheless fundamental in the governance of the country and the State is under an obligation to apply them in making laws. The Preamble also promises socio-economic justice, the fundamental rights confer certain justiciable socio-economic rights and the Directive Principles fix the socio economic goals which the State must strive to attain. We are also tempted to note here that due to large scale unemployment and surplus labour a matching opportunity is offered to the employer to exploit the needy. Taking into consideration the market conditions and population growth, the employers are taking the advantage of dictating the terms of employment by taking advantage of the absence of bargaining power in the other. We are also experienced that the unorganized job seeker is left with no option but to accept the employment on take-it-or-leave-it terms offered by the employers. Employers have also developed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumvent the protection offered to the working classes under the benevolent legislations enacted from time to time.

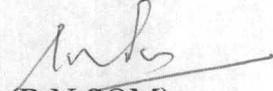
7. From the records, it is seen that although the Applicant was recruited through a regular process of selection, he was allowed, in absence of regular sanctioned post, to discharge his duties on contractual/daily wage basis. When sanctioned posts were made available, the Applicant was simply to be regularized against the sanctioned post; especially when there were nothing reported against

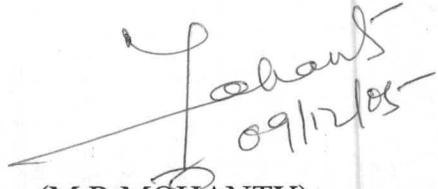
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him during his daily wage period, for which the Respondents allowed him to continue for all these periods. But, instead of doing that, steps were taken to fill-up the said sanctioned post through Employment Exchange/by outsiders. Although Applicant submitted his candidature for consideration, the same was not considered, on the plea that his name has not been sponsored by the Employment Exchange. It is an admitted fact that the Applicant had discharged his duties as Mess Helper from 06.11.2002. It is also not in dispute that his work had not been adversely commented upon, during the period he had worked on daily wage basis. Law is well settled that in order to make the zone of consideration wider, the employer has to give wide publication of the vacancies through various medias. In the present case, when the Applicant (an employee may be engaged on daily wage basis under the Respondents) offered his candidature for consideration, the Respondents ought not to have denied giving consideration to his case. The circumstances, in which the Applicant was placed, lead him to have a legitimate expectation; which also demands that, when the Applicant discharged his duties on daily rated basis, his right to be considered ought not to have been thrown to wind; merely because his name had not been sponsored by the Employment Exchange. Consideration of candidates, who have only been sponsored from the Employment Exchange, for any post in Government Organization is no more held to be a good law by various Courts in this

Country and in that view of the matter, the candidature of the Applicant ought to have been considered by the Respondents.

8. It is also not in dispute that the post of Mess Helper has been reserved for ST community and the post of Laboratory Attendant has been reserved for OBC candidates and the Applicant is an OBC community. It is not known as to whether interview had been taken place on the date fixed or not. Since this Tribunal had already given direction to consider the case of the Applicant and not to declare the result; in view of our findings that the Applicant was entitled to be considered, although his name had not been sponsored by the Employment Exchange, the Respondent Department are hereby directed to declare the result of the selection test conducted by them for the post in question.

9. In the above said premises, this Original Application is allowed. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER (JUDICIAL)