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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.131 OF 2005

Cuttack this the 26th day of July, 2006

A.K.Parida ... Applicant(s)

-VERSUS-

Union of India & Ors. Respondent(s)

FOR INSTRUCTIONS

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

B.B.M.
(B.B.MISHRA)
MEMBER(ADMN.)

R.K.B.
(R.K.BATTA)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.131 OF 2005

Cuttack this the 26th day of July, 2006

CORAM:

THE HON'BLE MR.JUSTICE R.K.BATTA, VICE-CHAIRMAN
AND
THE HON'BLE MR. B.B.MISHRA, MEMBER(ADMINISTRATIVE)

...

Ajaya Kumar Parida, aged about 40 years, S/o. Khetrabasi Parida, Vill: Taras, PO: Jenapur, P.S. Dharmasala, Dist-Jajpur, at present working as a Khalasi Helper under J.E.-1/DW.CTC/E.C.Rly and promoted to the post of Blacksmith

...Applicant

By the Advocates : Mr.N.R.Routray
Mr.S.Mishra

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, Khurda Road Divn., E.C.Railway, At/PO/PS-Jatni, Dist-Khurda
3. Sr.D.P.O., Khurda Road Division, East Coast Railway, At.PO/P.S-Jatni, Dist, Khurda
4. Dillip Kumar Samal, aged 39 years, at present working as a Khalasi Helper imder SSE/W/BBS promoted to the post of Filter Operator under BRAG/SSE(W)-BBS/E.C.Rly.
5. Manas Kumar Dhal, aged 39 years, at present working as a Khalasi Helper under SE/WW/KUR/E.C.Rly., promoted to the post of Filter Operator under the S.E.R(W/Works)- KUR/E.C.Rly.
6. Srikant Kumar Mishra, aged 30 years, at present working as Khalasi Helper under SE/W/PUI/E.C.Rly., promoted to the post of Filter Operator under SE(Works) PUI/EC Rly.

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7. Sarat Kumar Pradhan, aged 38 years, at present working as Khalasi Helper under SSE/W/PPS/E.C.Rly., promoted to the post of Filter Operator under MCS/SSE/(W)-MCS/E.C.Rly.
8. Sr.Divisional Engineer (Co-ordination) E.Co. Rly. Khurda Road division, At/PO/PS-Jatni, Dist-Khurda

...Respondents

By the Advocates: Mr.C.R.Mishra

M/s. J.M.Pattnaik
S.Mishra

ORDER

MR. JUSTICE R.K.BATTA, VICE-CHAIRMAN: The applicant, while working as Khalasi, applied for the post of Skilled Artisan, Gr.III in the pay scale of Rs.3050-4950/-. The posts in all trades were to be filled up through Limited Departmental Competitive Examination against 25% promotional quota. The total number of posts to be filled in all trades was 45 out of which 36 posts were meant for un-reserved candidates, 6 posts for Scheduled Caste candidates and 3 posts for Scheduled Tribe candidates. The applicant belongs to Scheduled Caste ^{category} candidate. The case of the applicant is that he had given his preference in Column-11 of the application form for the post of Filter Operator followed by Painter and Fitter. The applicant was selected and was at Sl. No.7 as per merit. According to him, the select list was prepared in order of seniority/length of service. By order No.19/05 dated 31.3.2005, Respondent No.3 allotted trades to 25 successful candidates. The applicant was promoted and appointed in the trade of Blacksmith. The

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applicant further contends that four persons who are junior to him have been allotted the trade of Filter Operator against four available posts. The applicant claims that they have better chance of promotion in the trade of Filter Operator than the trade of Blacksmith and taking into consideration his position in the merit list, he should have been allotted the trade of Filter Operator, as per preference given by him the application form. Though no ^{disclosed} facts are ~~led~~ in relation to the action of Respondent No.3 at the behest of Respondent No.2, yet without disclosure of any facts the same has been made a ground in the O.A. It is elementary that the grounds flow out of facts and unless facts are there the grounds cannot be pleaded. Therefore, at the outset, we must state that the allegation of malicious action~~s~~ are unfounded. Likewise, again in the ground it is stated that the allotment of Filter Operator, Gr.III in favour of Shri S.K.Mishra, and D.K.Samal has been done because, their brothers are working in the higher posts of Personnel Department. In this regard no facts have been pleaded and ground has been taken without disclosing the facts in the Column meant for disclosure of facts. Besides this, neither the said brothers of S.K.Mishra and D.K.Samal have been made parties nor Res. 2 and 3 who ^{are said} ~~were likely~~ to have acted maliciously have been made parties in their personal capacities. It is pertinent to note that the contents of Para 1 to 4 have been verified based on

personal knowledge and Para 6 to 12 have been verified as believed to be true on legal advice. Paragraph 5 which relates to grounds has not at all been verified.

2. The applicant had filed a representation to the authorities which was rejected vide order dated 21.4.2005. The applicant has approached this Tribunal for quashing of the said order alleging that the grounds stated therein are not correct. He seeks further direction to Respondent No.3 to promote him to the post of Filter Operator, Gr.III with effect from 31.3.2005.

3. The Respondents in their reply have stated that the allotment of trades among the empanelled candidates is decided by Sr.D.E.N. (Coordination), Khurda Division, after taking into consideration available vacancies in particular trade, previous working experience of candidates in the particular trade, their place of working, service record and options given by them. It is further submitted by the Respondents that all the three private Respondents had opted for different trades and were allotted Filter Operator Mechanic, Gr.III which were available at their place of working or within the jurisdiction of controlling Assistant Engineer. Therefore, the said three respondents were allotted Filter Operator Mechanic, Gr.III posts as per availability of vacancies and taking into account their working experience in

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the particular trade. The Respondents also contend that all the candidates at Sl. No. 4 to 23 of Annexure-A/4 had opted for Filter Operator as their first preference although there were four vacancies in the trade of Filter Operator. The applicant in his Group D capacity was working in the office of Junior Engineer in Divisional Engineering Workshop, Cuttack, where there was no scope for any working experience in the Filter Operator trade to justify his claim, whereas there was scope for gaining experience in Blacksmith trade and in case of four Respondents in their former Group-D posts they had worked in the field unit under different Sr. Section Engineer (Works) or Section Engineer (Works) office wherein there was adequate scope for gaining experience of Filter Operator trade. The Respondents also contend that there was no vacancy of Filter Operator at Cuttack. The Respondents also submit that the contention of the applicant that scope of further promotion in trade of Filter Operator is much higher than the trade of Blacksmith is not based upon any ground.

4. We have heard the learned counsel, who have argued on the lines of pleadings of the parties, which we have already reproduced and as such it is not necessary to repeat the argument advanced by them. It is no doubt true that the official Respondents had called for preference from the candidates in the application form. But calling for preference does not give or create any

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right in favour of the applicant for allotment of the trade for which the preference is given. Likewise, seniority cannot be sole criteria for allotment of trade in a promotional post. The competent authority has to take into consideration various factors while allotting trade in the promotional post. The applicant's claim is mainly based upon his preference and seniority in the list and according to him, the rejection of his application on the grounds mentioned therein is not justified. In the said impugned letter under challenge, the Respondents have stated that it was not obligatory on the part of the administration to allot the trade as per preference. It is further stated therein that for allotment of trades relevant records and other factors are taken into consideration and the preference does not confer any right to get opted trade. The allotment of trade has to be considered subject to availability of vacancy in the unit and other factors. The Respondents in their reply have stated that candidates at Sl. No. 4 to 23 of Annexure-A/4 had opted for Filter Operator as their first preference and there were only four vacancies in the trade of Filter Operator. The Respondents had taken into consideration various factors including availability of vacancies, work experience, working report by the controlling authority and attitude of the staff towards devotion to work and duty. The Respondents have also stated that in the case of applicant there was scope of gaining experience in

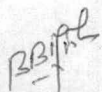
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Blacksmith trade, but there was no scope for any working experience in the Filter Operator grade while the applicant was working in Group D category. On the other hand, the four Respondents in their former Group D posts had worked in the field Units under the Senior Sectional Engineer(Works) or Section Engineer(Works) where there was adequate scope for gaining experience of Filter Operator trade. The Respondents have also stated that there was no vacancy available in the office of Junior Engineer, Divisional Engineering Works, Cuttack. Thus, according to Respondents, the factors which have been taken into consideration are – availability of vacancies in particular trade, previous working experience in particular trade, place of working, service records as also options given by the candidates. The Respondents have categorically denied the contention of the applicant that there are better chance of promotion in the Filter Operator trade as compared to trade of Blacksmith. The Respondents have adopted some criteria for allotment of trade to the successful candidates and in our opinion, the said criteria cannot be faulted with. These are all matters where the executive authorities have to take decision and unless the decision making process is faulted, no interference is called for in such matters. The Tribunal cannot substitute its own opinion for the view taken by the competent authority

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unless the said view can be said to be taken on mala fide considerations or is totally unjustified.

5. For the aforesaid reasons, we do not find any merit in this O.A. and the O.A. is hereby rejected, with no order as to costs.


(B.B. MISHRA)
MEMBER (ADMN.)


(R.K. BATT A)
VICE-CHAIRMAN