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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No.926 of 2005
Cuttack, this the ~~13th~~ day of January, 2009

Babula Behera Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.926 of 2005

Cuttack, this the 13th day of January, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Shri Babula Behera, aged about 28 years, Son of Raghunath Behera permanent resident of Village Surada (Dhoba Sahi), PO. Surada, Dist. Ganjam.

.....Applicant

By Advocate : M/s.B.S.Tripathy, M.K.Rath, J.Pati.

- Versus -

1. Union of India represented through the Special Secretary, Aviation Research Centre (ARC) Head Quarters, Cabinet Secretariat, East Block-V, R.K.Puram, New Delhi-110 066.
2. The Deputy Director (Admn.) Aviation Research Centre (ARC) Head Quarters, East Block-V, R.K.Puram, New Delhi-110 066.
3. The Deputy Director (Admn.) Aviation Research Centre (ARC) Charbatia, At/Po. Charbatia, Dist. Cuttack-754 028.
4. The Assistant Director (Admn.) Aviation Research Centre (ARC), Charbatia, At/Po. Charbatia, Dist. Cuttack-754 028.

....Respondents

By Advocate :Mr.B.K.Mohapatra,ASC.

O R D E R

Per- MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant while working as a contingency paid worker of the Aviation Research Centre at Charbatia got selected through a regular process of selection to the post of Dhobi in the year 1999. Thereafter he was asked to submit the attestation and SSQ forms duly filled in by him. According to Applicant in spite of all the above, when he was not issued any order of appointment, by filing representations he agitated the matter before the Respondents and in turn the Assistant Director (A) vide letter under Annexure-A/5 dated

05.01.2005 intimated to the Applicant that the post in question could not be filled up due to administrative reason. He submitted another representation under Annexure-A/6 reiterating his grievance and alleging no response to the said representation he has approached this Tribunal in the present OA seeking following relief:

- “(a) To pass appropriate orders directing the respondents/authorities to consider the case of applicant to give him an appointment either I the post of Dhobi or in any group D post lying vacant in the ARC at Cuttack;
- (b) To pass such further order/orders as may be deemed fit and proper in the facts and circumstances of the case and allow this OA with costs.”

2. Engagement of the Applicant as a worker paid out of contingency prior to his selection through a due process of interview conducted on 10.09.1999 has not been disputed by the Respondents in their counter filed in this case. However, it has been maintained that after the selection of the Applicant but before issuance of the order of appointment, the Ministry of Finance vide order dated 05.08.1999 imposed ban on filling up of the direct recruitment vacancies. Pursuant to the above order of the Ministry of Finance, the ARC Headquarters, New Delhi intimated to the regional office at Charbatia that appointment to the post in question can be made only after lifting of the ban of the Government. However, a proposal was sent to the Ministry of Finance seeking relaxation of the ban order so far as the filling up of the post in question is concerned. But the Ministry of Finance turned down the said proposal. They have refuted

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the allegation of non-consideration of the representations of the Applicant.

3. By filing rejoinder the Applicant has pointed out on lifting of the ban instead of issuing the offer of appointment to the Applicant the Respondents issued fresh advertisement under Annexure-A/7 dated 29.12.2006 for filling up of among other posts the post of Dhobi and though the applicant has applied pursuant to the said notification he apprehends non-consideration of his candidature on prescription of qualification other than the Applicant has acquired. By stating so he has reiterated his prayer made in this OA.

4. By filing reply to the rejoinder it has been pointed out by the Respondents that on lifting of ban on direct recruitment in respect of the operational posts of DG (S) and as per the changed norms and selection procedure (i.e. RR of 2003) the present selection process for the post of Dhobi and for other Group D posts has been started on the basis of the advertisement dated 29.12.2006 wherein minimum educational qualification has been fixed as middle school pass. Since the applicant does not possess the minimum educational qualification his candidature has been rejected. Accordingly, the Respondents opposed the prayer of the Applicant.

5. Learned Counsel for the Applicant has argued that since the applicant was duly selected through a process of interview followed by verification of his antecedents he has acquired a vested right to be appointed and, therefore, on lifting the ban he should have been offered with the offer of appointment instead of going ahead to fill

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up the said post through fresh selection. His contention is that after lifting of the ban order, there is no record to show that new posts were created and as such, the amended rules have only prospective application and cannot take out the existing right of the Applicant. Accordingly, he has insisted for the relief claimed in this OA.

6. On the other hand learned counsel for the Respondents has argued that merely because the applicant was selected he cannot claim any right to be appointed. However, as per the order of the Ministry the post of Dhobi was deemed to have been abolished and as such on lifting the ban means sanction of new posts which was rightly notified to be filled up as per the amended recruitment rules which came into existence in the year 2003. As such the claim of the applicant is not tenable in the eyes of law.

7. We have given our anxious thoughts to the rival submissions of the parties and perused the materials placed on record. Neither the Applicant nor the Respondents produced any authority to show what was the terms and conditions imposed in the letter of the Ministry of Finance imposing the ban. However, the Respondents in letter under Annexure-A/5 dated 5.1.2005 intimated to the applicant that the post of Dhobi for which interview was conducted on 10.9.1999 could not be filled up due to administrative reason but what is the administrative reason was not spelt out in the said order. The Respondents have also not produced any piece of paper to show that the post against which the applicant was selected was in fact abolished by the order of the Ministry of Finance and the

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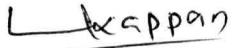
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post for which advertisement was issued on 29.12.2006 was the posts newly sanctioned by the Ministry. It needs no emphasis that vacancies occurring prior to promulgation of new rules, the said vacancies have to be filled up according to old rules even though interview was done after promulgation of new rules-**Arjun Singh Rathore and others v B.N.Chautvedi and others** (2008) 2 SCC (L&S) 387. In view of the above, denial of the appointment to the Applicant who had been selected through a process of selection including submission of attestation form by him and verification of his antecedents by the Respondents, in our considered view, is not in accordance with Law.

8. In view of the facts and legal principles set out above, the inevitable conclusion is that the Applicant is entitled to be appointed to the post of Dhobi which shall be offered by the Respondents within a period of 60 days from the date of receipt of copy of this order.

9. In the result, this OA stands allowed by leaving the parties to bear their own costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

Knm,ps