

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO.206 OF 2006  
CUTTACK, THIS THE DAY OF 26<sup>TH</sup> SEPTEMBER, 2007**

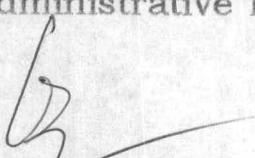
Jayadev Sahu .....Applicant

-VERSUS-

Union of India & others .....Respondents

**FOR INSTRUCTIONS**

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

  
DR. K. B. S. RAJAN  
MEMBER(JUDL.)

  
Tarsem Lal  
TARSEM LAL  
MEMBER (ADMN.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL**

**CUTTACK BENCH, CUTTACK**

**O.A.NO.206 OF 2006  
(DECIDED ON SEPTEMBER,2007)**

**CORAM:**

**HON'BLE SHRI K.B.S.RAJAN, JUDICIAL MEMBER**

**AND**

**HON'BLE SHRI TARSEM LAL,ADMINISTRATIVE MEMBER**

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Jayadev Sahu, aged about 29 years, S/O.Ra, Krishna Sahu, At/P.O:- Jagua, Via:-Kholan, District: Bolangir.

.....Applicant

Advocates for the Applicant ..... M/S. D.P.Dhalsamant & P.K.Bhera.

**Versus:**

1. Union of India, represented through its Secretary, Ministry of Defence, Government of India, New Delhi.
2. Ordnance Factory Board, represented through its chairman, Government of India, Ministry of Defence, Ayudh Bhawan, 10-A, Saheed Khudiram Bose Road, Kolkata-700001.
3. General Manager, Indian Ordnance Factories, Ordnance factory, Bolangir-(P), At/P.O.:D.F.Badmal, District: Bolangir-767770.

..... Respondents

Advocate for the Respondents ..... Mr.U.B.Mohapatra.

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ORDER

HON'BLE SHRI TARSEM LAL, MEMBER (ADMN.):

Applicant Mr.Jayadev Sahu has filed this O.A.206/06 asking for the following relief:

- “a) The order dated 2.11.2005(Annexure-A/7) be quashed.
- b) Direction be issued to the Respondents to appoint the applicant to the post of Electrician/SS.”

2. The facts of the case as alleged by the applicant is that he belongs to the OBC category and has passed his HSC examination in the year 1992 and has passed ITI in the trade of Electrician in the year 1994 and B.A. examination in the year 2000. Res.No.3 had issued an advertisement to fill up various posts vide notification No.ADV/1/2000 which was published in the Employment News 11-17/03/2000(Annexure-A/1). Under the above notification, applications were invited to fill up 17 posts of Electricians/SS. Out of 17 posts, 9 were meant for the OBC, 6 for un-reserved and 2 posts for Ex-serviceman.

3. In response to the above advertisement, applicant submitted all the required documents within the stipulated period. Written test for the same was held on 28.11.2000 and the interview was held on 20.2.2001. The applicant appeared for the interview and test and qualified the same.



4. In addition to the above, Res.No.3 without finalizing the above selection, sent a requisition vide letter dated 25.1.2002 to the Employment Exchange to sponsor candidates for 4 posts of Electrician/SS out of which 2 posts for unreserved category and 2 posts for OBC. As the applicant had already been selected for the post of Electrician, he was directed vide letter dated 29.11.02 (Annexure-A/3) to submit the Attestation Forms regarding Police case/Court case pending against him. The police verification report/attestation form has also been submitted.

5. The applicant was issued a call letter vide letter dated 06.01.03 to appear in the written test for the post of Electrician/SS for which test was to be held on 2.2.03. As the applicant had already been selected for the post of Electrician and the police verification report submitted, therefore, he did not appear in the written test.

6. Subsequently, the applicant made representations dated 18.07.05(Annexure-A/5) and 17.10.05 (Annexure-A/6). In response to the above representations of the applicant, he was informed by Res.No.3 vide his letter dated 2.11.05(Annexure-A/7) that the posts of Electrician/SS is not required in view of the present scenario on the basis of revised sanctioned strength, amendment of Recruitment Rules and modification of recruitment process and cadre review of Industrial Establishment. The applicant has alleged that denial of appointment to a selection candidate on the ground of modification of sanctioned strength, amendment of recruitment rules and modification of recruitment process is bad in law which violates Article-16(1) and 14 of the Indian Constitution.

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7. Aggrieved by the above, the applicant has filed this O.A. and prayed for the relief as stated in para-1 above.

8. On the contrary, the Respondents have filed reply to the O.A. stating that 17 posts of Electrician/SS were advertised. In second phase, 04 posts of Electrician were also advertised for sponsorship of eligible names. For first phase posts of Electrician/SS, around 700 applications were received. The written test was conducted on 28.11.2000 and interview was held on 19.02.01 and 20.02.02. Based on written test and interview, 13 candidates were appointed by Selection Board for offering appointment for the posts of Electrician/SS. The applicant was one of the selected candidates for the said post. Accordingly, Attestation Forms(PVRs) for the post of Electrician were issued to 12 candidates including the applicant. Written test and interview/practical test were also conducted in respect of the candidates for the second phase of the Electricians/SS.

9. The Respondents have pleaded that in the meanwhile there was a revision of the sanctioned strength, amendment of recruitment rules and modification of recruitment process and cadre review of the industrial establishment. Based on these revisions, it was decided by the Competent Authority that the posts of Electrician/Semi-Skilled were not required at that point of time. The decision of the competent authority was communicated to the applicant vide letter dated 2.11.05(Annexure-A/7).

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10. Based on the above revisions, posts of Electrician were not required keeping in view the functional requirement. Therefore, no appointment has been offered to any of the candidates either from phase-I or phase-II selection and both the selection lists have been cancelled by the Appointing Authority. The Respondents have submitted that the selected candidates do not acquire indefeasible right to have appointment although they have been selected. The decision not to fill up the vacancies has been taken bonafide for appropriate reasons.

11. In this regard the Respondents have cited the case of Shankarsan Das Vrs.UOI (Published in AISLJ Vol.43 1992 (1) Civil Appeal NO.8613 of 1983 wherein the Hon'ble Apex Court has held as under:

“It is not correct to say that if a number of vacancies are notified for appointment and adequate numbers of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily, the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selected they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has licence of acting in an arbitrary manner. The decision not to fill up the vacancies had to be taken bonafide for appropriate reason. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected in the recruitment test and no discrimination can be permitted.”

12. Respondents have explained that there is no violation of Article 16 (1) and 14 of the Constitution of India as the applicant was informed while issuing Attestation Forms for the post of Electrician/SS that having issued Attestation Forms, there is no guarantee or commitment to issue an appointment order vide letter dated 29.11.02 (Annexure-A/3). They have further stated that there is no violation of any principles of natural justice or the Directive principle of the state policy. If the applicant had fulfilled all the criteria laid down for the consideration of his candidature, he cannot claim appointment as a matter of right.

13. In view of the circumstances stated above, the Respondents have pleaded that the O.A. is devoid of any merit and is liable to be dismissed.

14. We have heard Counsel of both the parties. The Ld.Counsel for the applicant has pleaded that the applicant appeared in the selection test and interview and qualified the same. It was unfair on the part of the Respondents to hold another test and interview for the second phase before giving appointment to the candidates who were selected in the first phase. The amendment to the recruitment rules, revision of strength has taken place after three years of the selection process.

15. Ld.Counsel for the Applicant relied on the case of SCC (L&S) 1999 Vol-2, page-1050, para-4 Purushottam Vs. Chairman, M.S.E.B. & Ors. wherein the Hon'ble Apex Court has held as under:

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"In view of the rival submission the question that arises for consideration is whether a duly-selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr. Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decisions of the screening committee which decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature."

The Ld.Counsel for the Applicant also relied on the case of Abdul Hakem.P. Vs. Union of India & ors. 2006 (1) ATJ, page-7 at para-10 wherein it has been held as below:

"As relating to the extant instructions, the applicant relied on the A-6 document which is an O.M. of the DOPT, Government of India to plead that a person already on the list of selected candidate awaiting appointment shall be accommodated before heading for fresh recruitment and there

is no time limit/validity for the panel of selected candidates. A perusal of Annexure A-6 documents shows that it is laid down therein that recruitment should take place only when there are no candidates available, from an earlier list of selected candidates and no further recruitment to take place till the available selected candidates are exhausted. Again, once a person is declared successful according to the merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change, after his name has been included in the list of selected candidates."

16. The Ld.Counsel for the Respondents reiterated all the arguments given in their reply to the O.A. and pleaded that no body has been appointed from the selection made in phase-I and phase-II as sanction strength of the establishment has been revised. Therefore, O.A. is devoid of merit and may be dismissed.

17. We have considered the case carefully and perused the documents. It is admitted position that the test and interview for the selection in the first phase was held on 28.11.2000 and 20.02.2001 in which the applicant was selected and issued attestation forms. However as the sanctioned strength has been revised, the applicant does not get indefeasible right for appointment even if he has been selected in the interview and test as held by the Hon'ble Apex Court in the case of Sankarsan Das Vrs. Union of India(SUPRA).

18. The case law quoted by the Learned Counsel for the applicant does not help him in any way. In case of Purushottam Vs. Chariman MSEB, vacancies were available but panel of selected candidates had

expired. Similarly in case of Abdul Hakim P. Vs.UO, it was held that selected candidates awaiting appointment shall be accommodated before heading for fresh recruitment. Whereas in the present case under consideration neither any vacancies were available nor any candidates selected wither in Phase I or Phase II were given appointment.

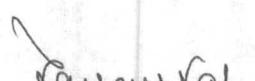
19. The Hon'ble Supreme Court has held in the case of State of Haryana V.Des Raj Sangar, (1976) 2 SCC 844, at page 847 as follows:

"Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished."

20. In view of the above discussion, the O.A. is dismissed. No order as to costs.



DR.K.B.S.RAJAN  
MEMBER(JUDL.)

  
Tarsem Lal  
MEMBER(ADMN.)