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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.607 of 2006
Cuttack, this the 09th day of March, 2009

Prakash Kumar MohapatraApplicant
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.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.607 of 2006

Cuttack, this the 09th day of March, 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)

Prakash Kumar Mohapatra, aged about 36 years, Son of Ramakanta Mohapatra, working as Examineer (MCM) under Controller Senior Quality Assurance (A) Establishment, Badmal, Bolangir, PIN-767770.

.....Applicant

By Advocate : M/s.S.Pattnaik, B.R.Kar

- Versus -

1. Union of India represented by the Secretary to the Government of India, Ministry of Defence, Department of Defence Production and Supplier (Directorate General of Quality Assurance), New Delhi-11001.
2. The Controller, Ministry of Defence (DGQA), Government of India, Controllerate of Quality Assurance (Ammunitions), Kirkee, Pune-411003.
3. OFFG.SR. Quality Assurance Estt.(A), Ministry of Defence (DGQA), Government of India, Badmal, Bolangir, Orissa, PIN-767770.
4. Controller, Ministry of Defence (DGQA), Government of India, Controllerate of Quality Assurance (Engg.EQPT), Aundhcamp, Pune-410027.

....Respondents

By Advocate :Mr.U.B.Mohapatra, SSC
&
Mr.R.C.Swain, ASC.

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ORDER

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

Applicant is working as an Examiner (MCM) under the Controller Senior Quality Assurance (A) Establishment, Badmal, Bolangir. Respondent No.3 (Offg. Sr. Quality Assurance Officer) issued an order under Annexure-5 dated 27.1.2006 for holding trade test for filing up of the promotional post of Charge man Grade II (SP Sub No.4-AMN). The trade test was scheduled to be held on 21.02.2006 & 22.02.2006. Through the notification under Annexure-5, it was made clear to the eligible candidates/employees that the Trade Test for promotion to C/M-II will be conducted in the following fashion:

“4(a) (i) Theory – 40%; (ii) Practical-40%; (iii) Oral-20%.

(b) The Theory paper will be in two parts of 20% each as given below:

(i) First part (20 marks) -1000 hrs to 1130 hrs on 21. Feb 2006.

Comprising questions to test writing capability, management/supervisory ability, knowledge of AHSP functions, QA procedure, study of drawing etc.

(ii) Second part (20 marks) -1400 hrs to 1530 hrs on 21 Feb 2006;

Comprising questions to test technical knowledge pertaining to discipline/subject at least at the level of ITI standard.

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- (c) The Theory paper will be in English/Hindi/Regional Language. The candidate will have option to reply in the language chosen by him.
- (d) Practical Test (40 marks) & Oral Test (20 marks) on 22 Feb 2006.

Practical Test of 40 marks and Oral Test for 20 Marks will follow the Written Test and will be conducted at CQA (A) Kirkee on 22 Feb 2006 in English/Hindi/Regional Language in order to assess the personality, verbal expression, general supervisory ability and Technical competency of the individual.

2. The qualifying marks were notified to be 50% of the total marks fixed for the tests. Applicant along with other eligible candidates/employees appeared at the test and based on the result of the test vide order under Annexure-7, 43 candidates/employees were promoted to the post of Charge man Grade II. The name of Applicant did not figure in the said list. Alleging award of lesser marks in all the events; especially in the events of practical tests (without physically holding any such practical test), he has approached this Tribunal in the present OA filed u/s.19 of the A.T. Act, 1985 seeking the following relief:

- “(a) The Respondents may be directed to treat/declare the applicant to have been promoted to skilled grade w.e.f. 28.3.2006 and maintain his position in the promotion list. Highly skilled to charge men Grade-II.

- (b) Further the respondents may be directed to accord all consequential service benefits, by way of promotion and the related financial benefit on the basis of the applicant's seniority on 28.3.2006 and on the basis of the (prayed for) promotion of the applicant to the Charge man Grade-II w.e.f. 28.3.2006 and/or;
- (c) Quash the orders at Annexure-7;
- (d) Any other order may be passed as this Hon'ble Tribunal deems just and proper."

3. By filing counter, the Respondents have brought to the notice of this Tribunal that as per the notification under Annexure-5 all the three tests viz; written, practical and interview were conducted on 21st and 22nd of February, 2006 wherein the applicant along with other eligible candidates/employees appeared at the test. As the Applicant did not secure the qualifying marks of 50% in aggregate out of total marks of 100, he could not be declared qualified as a result of which he was not promoted vide order under Annexure-7. The marks obtained by the Applicant out of marks contained in each subject\$ given by the Respondents are as under -

Written test	Total Marks	Marks Obtained
Part - I	20	05
Part - II	20	3.5
Practical Test	40	10
Interview	20	08
Total Marks	100	26.5

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73 high skilled employees appeared at the trade test. Out of these 28 HS have been declared qualified. On the complaint received from the candidates that written test was tough and practical test was more focused in metrology rather than the field in which candidates were working, as per order received from Hqrs, all eligible candidates were asked to report to the Office of the Respondent No.2 for in house training starting from 21st March, 2006 for three days. After imparting necessary training, fresh qualifying trade test was conducted from 23rd to 25th March, 2006. Applicant along with others participated in the said test. The marks obtained by the applicant in each part have been given as under –

Written test	Total Marks	Marks Obtained
Part – I	20	13
Part – II	20	15
Practical Test	40	09
Interview	20	04
Total Marks	100	41

As the Applicant did not secure the qualifying mark of 50% he was not promoted and others who had achieved the marks of 50% in aggregate were promoted under Annexure-8. They have also strongly refuted the

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assertion of the applicant that no practical test was conducted. Accordingly, it has been stated by the Respondents that there being no illegality in the matter of awarding the marks thereby promoting the candidates based on their results of the trade test, this Original Application is liable to be dismissed.

4. We have given our thoughtful consideration to various submissions made by the parties. As the arguments were the reiteration of the contentions raised in the pleadings, we do not feel it appropriate once again to reiterate the same except to record that besides on merit, the Learned Counsel appearing for the Respondents strenuously urged for dismissal of this OA on the ground of non-joinder of necessary party. It is seen that except bald assertion that there was no practical test and the Respondents have intentionally and deliberately awarded the applicant lesser marks on each of the events, no iota of evidence has been produced by him enabling this Tribunal to accept the said assertion of applicant thereby declaring his non-selection to be bad in law. Rather we may record that now a days it is a trend of the unsuccessful candidates

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to challenge his/her non-selection by attributing unsubstantiated allegations without any substance and this case is nevertheless ~~of~~ one of such cases. As such, we have no hesitation to hold that there was ^{no} ~~any~~ infirmity in conducting the trade test so also awarding the marks to the candidates including the Applicant. To add to the above, we may record that if there was no practical test conducted although notified to be held, the Applicant should have informed in writing to the higher authority but he failed to do so prior to publication of result or approaching this Tribunal.

5. Besides on merit of the matter, it is seen that the Applicant in this OA sought quashing of the order (Annexure-7) of promotion of 43 qualified candidates without making any of them as parties to this OA though it is a constitutional requirement as held by the Hon'ble Apex Court in the case of **Rashmi Mishra vs. MP Public Service Commission and others** [2007] 2 SCC (L&S) 345. As such on this score alone this OA is liable to be dismissed.

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6. In the light of the discussions made above, we find no merit in this OA. Hence the OA stands dismissed by leaving the parties to bear their own costs.

K. Thankappan

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

C.R. Mohapatra

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