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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.475 of 2007
Cuttack, this the 07th day of August, 2009

Smt.Rukmini Jain 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.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.475 2007

Cuttack, this the ~~07th~~ day of August, 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)

.....

Smt. Rukmani Jain, aged 36 years, W/o. Sri Raichand Jain, resident of At/Po/PS. Bongamunda, Dist. Bolangir presently working as LDC, Ordnance Factory, At/Po.Badmal, Dist. Bolangir.

Applicant
~~Mr. Aswini Kr. Mishra & Co. Counsel~~
Advocate for Applicant: M/s.P.K.Padhi, M.P.J.Ray,
D.K.Jain, J.Mishra
-Vs-

1. Union of India represented through its Secretary, Ministry of Defence Production, New Delhi-110001.
2. Ordnance Factory Board, Saheed Khudiram Bose Road, Kolkata-700001.
3. General Manager, Ordnance Factory, At/Po.Badmal, Dist. Bolangir.
4. Sangram Keshari Behera, aged about 37 years, S/o.Subas Chandra Behera working as Lower Division Clerk, Ordnance Factory, At/Po.Badmal, Dist. Bolangir.
5. Pradyumna Kumar Sharma, aged about 35 years, son of Somdutta Sharma, working as Danger Building Worker Ordnance Factory, At/Po.Badmal, Dist. Bolangir.

..... Respondents

Advocate for Respondents: Mr. U.B.Mohapatra, SSC
M/s. U.K.Samal,
B.R.Barick, S.P.Patra.

O R D E R

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

The Applicant, who is holding the post of Lower Division Clerk in Badmal Ordnance Factory, challenged permitting the Technical persons to sit in the Limited Departmental Examination alleging to be in violation of the statutory rules thereby allowing

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unequal becoming equal and jeopardizing the interest of the non-technical employees of the Ordnance Factory for getting promotion to higher post. She has, therefore, prayed for the following directions:-

“to direct the Respondent No.3 to quash the candidature of all Technical candidates for the post of ‘C’ category i.e. charge man Gr.II/NT(OTS) and/or quash the candidature of all Technical candidates.

To quash the selection of Respondent No.5 and direct the Respondent Nos.1 to 3 to appoint the applicant in chargeman Gr.II/NT(OTS) from the date other selected candidates joined in their respective posts.

And further direct the Respondent No.3 to publish the result of non-technical candidates and appoint non-technical candidates I ‘C’ category i.e. chargeman Gr.II/NT(OTS);

To pass any other order/orders deem just and proper I the interest of justice and award cost.”

2. According to the Respondents, advertisement was published vide Factory Order Part I No.80 dated 07.07.2007 and 86 dated 17.07.2007 inviting applications for filling up of two posts of Chargeman Gr.II/NT(Other than Stores) and other posts under Annexure-A1 & A/2 to the OA. Selection was conducted strictly in accordance with rules by permitting the candidates pursuant to the

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advertisement having all eligibility criteria. By producing the instruction under Annexure-R/4, the Respondents have stated that it is completely a myth to state that technical employees are prohibited under the rules to participate in the selection to the post of Chargeman Gr.II NT. Therefore, allowing the Technical persons to compete in the selection for the post of Gr.II/NT was in no way illegal. Further it has been stated by the Respondents that Applicant was one of the candidates in the said selection. The instruction issued by the Board was in force at the time of selection. It provides that employees in skilled grade are eligible to sit in LDCE Examination held for the post of Chargeman Gr.II/NT. Besides, the above, it has been stated that the Applicant had also participated in the selection without any demur and after being unsuccessful she has turned around by challenging the process of selection by stating that participation of the technical persons in the selection *de hors* the rules. Respondents maintain that in view of the above, this OA is liable to be dismissed by applying the ratio of the decision of the Hon'ble Apex Court in the case of

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University of Cochin v N.S.Kanjoonjamma and others reported in 1987 SCC (L&S) 976. By stating so, the Respondents have prayed for dismissal of this OA.

By filing rejoinder, while supplementing some of the averments made in the OA, Applicant has also contradicted some of the stand taken by the Respondents in their counter and has prayed for grant of the relief claimed in this OA.

3. In course of hearing it was argued by learned counsel for the applicant that as per rules under Annexure-R/1 the post of Chrgeman Gr.II is meant to be filled up 25% by direct recruitment after adjustment of surplus and transfers. This 25% direct recruitment quota shall be filled up from the open market, 25% by LDCE from amongst Lower Division Clerks or equivalents and above with 2 years experience in the grade. 50% of vacancies by promotion from panel prepared by relevant departmental promotion committee. In any category of supervisor cum operation (as such a new category of computerized numerical controlled (CNC) Machine or computer Operation) on failure of recruitment by



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promotion, by transfer, failing which by direct recruitment. It is submitted that charge man Gr.II is a non-technical post. Therefore, rule making authority consciously reserved certain percentage of posts for the employees continuing in the feeder grade non-technical posts. Prior to 1998 as per the rules only non-technical employees were being considered for the above posts. It has been argued that since rule, ip-so-facto does not permit allowing the technical persons to participate in the selection for the post of Charge Man Gr.II; the subsequent instruction issued permitting technical persons does give them the right to be considered as it is settled law in the case of **Postmaster General, Kolkata and others v Tutu Das (Dutt)**, (2007) 2 SCC (L&S) 179 that no policy decision can be taken in terms of Article 77 or Article 162 of the Constitution of India which would run contrary to the constitutional or statutory scheme. Further it is contended by the Learned Counsel for the Applicant that Annexure-R/4 cannot have over riding effect on the rules under Annexure-R/1 framed under Article 309 of the Constitution; as any instruction issued in violation of

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the provision of rules cannot be sustained as held by the Hon'ble Apex Court in the case of **Mahadeo Bhau Khilare (Mane) and others v State of Maharashtra and others**, (2007) 2 SCC (L&S) 194. That executive instruction cannot over ride or supersede the statutory rules, Learned Counsel for the Applicant has also relied on the decision of the Hon'ble Apex Court in the cases of **Palaru Ramakrishnaiah and others v Union of India and others**, AIR 1990 SC 166, **Ex.Capt.K.Balasubramanian and others v State of Tamil Nadu and another**, (1991) 2 SCC 208, **Sant Ram Sharma v State of Rajasthan** AIR 1967 SC 1910 and **Union of India v H.R.Patankar**, 1984 Supp.SCC 359. It has, therefore, been contended that since Rules under Annexure-R/2 do not permit the entry of the technical persons for non-technical posts, the instruction under Annexure-R/4 will give no right to the technical persons. Hence, Learned Counsel for the Applicant prays to direct the Respondent No.3 to quash the candidature of all Technical candidates for the post of 'C' category i.e. charge man Gr.II/NT(OTS) and to direct the Respondents 1 to 3 to appoint the

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applicant as charge man Gr.II from the date technical person i.e. Respondent No.5 was selected and joined the post with all consequential service and financial benefits. Per contra, it has been contended by learned counsel appearing for the Respondents that the applicant has no *locus standi* to challenge the selection after she having participated and failed to secure enough marks so as to be promoted/appointed against one of the vacancies. It has been contended that Recruitment Rules under Annexure-R/1 was amended in the year 1994. Thereafter in the year 1989 the letter under Annexure-R/4 was issued by way of clarification. Again the Recruitment Rule was amended in the year 2003. Recruitment to the post in question was conducted in the year 2007 in term of the relevant Recruitment Rules. These Rules do not preclude the technical employees having all other eligibility conditions to compete for the post of Charge man Gr.II. Further it was argued by Learned Counsel for the Respondents that though the instruction issued by way of clarification was of the year 1998, the same was not challenged at any point of time in the past. The

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Applicant participated in the selection process without any demur. When she could not get a berth due to her lower in position in the selection, she has turned around and challenged the selection alleging the irregular inclusion of Technical persons to compete for the post along with the Applicant. Therefore, Learned Counsel for the Respondents has prayed for dismissal of this OA.

4. Having given extensive consideration to the rival submission of the parties, perused the materials placed on record. It is not in dispute that the Recruitment Rule under Annexure-R/1 was amended in the year 1994. Thereafter, the instruction under Annexure-R/4 by way of clarification was issued by the competent authority in the year 1998. Thereafter, again the Recruitment Rule has undergone change/amended in the year 2003 which was much prior to the selection in question. On perusal of the old as also amended Rules, we do not find any such provision for excluding the Technical employees to compete in the selection for the post of Chargeman Gr.II. The instruction under Annexure-R/4 in question

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does not also show that it was issued in supersession of the provision of the Recruitment. Rather it gives sufficient indication that the same was only a clarificatory order without making any injury to the provision of the Rules. Even if it is presumed that the selection was conducted for pre-existing vacancies, then also it cannot be said that the Technical persons have no right to compete for the post in view of the extant Recruitment Rules. In view of the law relied on by him, while we are in agreement with the Learned Counsel for the Applicant that executive instruction cannot over ride or supersede the Statutory Rules, but for the reasons stated above, we find no such situation has occurred in the instant case. As such the argument of the Learned Counsel for the Applicant that the Executive Instruction under Annexure-R/4 superseded the Recruitment Rules is found meritless. We also find that the Applicant has also not questioned the inclusion of the names of the Technical persons to appear at the selection prior to or even till publication of the result. Rather, she appeared at the selection along with the technical employees without any demur

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and she was found not coming within the vacancies position/below in rank. Thereafter, she approached this Tribunal questioning inclusion of names of Technical Employees. We may usefully record that the object of any process of selection is to secure the best and the most suitable person for the job avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively is the essential foundation of any useful and efficient public service. Therefore, from a wider zone of consideration best candidate can be chosen to serve the department better way. It is trite law in the cases of **Om Prakash Shukla v Akhilesh Kumar Shukla**, 1986 Supp SCC 285, **Union of India v N.Chandrasekharan**, (1998) 3 SCC 694, **Chandra Prakash Tiwari v Shakuntala Shukla**, (2002) 6 SCC 127 that one cannot challenge the validity of the selection after having participated and failed to secure the job. The ratio of the above decisions of the Hon'ble Apex Court squarely covers and governs the case of the Applicant.

5 Even on microscopic scrutiny of the matter, we find no substance on any of the points raised by the

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Applicant enabling us to come to a conclusion that inclusion of the names of eligible Technical Employees for allowing them to face the selection along with the Applicant and all other similarly situated employees is in any way faulty or illegal. Hence, we hold that this Original Application sans any merit and is accordingly dismissed. There shall be no order as to costs.

L. Kappan

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

h. Mohapatra

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

Kjm,pe