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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 647 of 2010
Cuttack, this the 9th day of October, 2012

CORAM:
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

Sri Niranjan Nayak, aged about 39 years, Son of Sri K.C.Nayak at present working as Unskilled Labourer, T.No.94, Naval Armament Depot, Sunabeda, Qr.No.R "A" 715, Hal Township, Sunabeda, Dist.Koraput.

....Applicant

By legal practitioner: Mr. Dillip Kumar Mohanty, Counsel.

-Versus-

1. Union of India represented through its Secretary, Ministry of Defence, Sena Bhawan, New Delhi.
2. The Chief of Naval Staff, Integrated Headquarter, Ministry of Defence (Naval), New Delhi-1.
3. The Director General of Naval Armament, Integrated Headquarter, Ministry of Defence (Navy), New Delhi-1.
4. The Flag Officer, Commanding in Chief, Headquarters, Eastern Naval Command, Vishakhapatnam (AP).
5. The General Manager, Naval Armament Depot, Sunabeda, Koraput-763004.
6. Shri Duryodhan Reddy, aged about 40 years, USL, T-113, Naval Armament Depot, Sunabeda, Koraput-763 004.

....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC(for Res.Nos.1 to 5)
Mr.S.Mishra, Counsel (For Res.No.6).

ORDER

C.R.MOHAPATRA, MEMBER (ADMN.)

Having heard the rival contentions, perused the pleadings and the documents relied on in support thereof by the respective parties.

2. This OA has been filed by the Applicant challenging the order under Annexure-A/5 dated 17th July, 2010 rejecting his representation dated 10th September, 2009 against the gradation/seniority

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list of unskilled labourers published and circulated by the Respondent-Department under Annexure-A/3. The rejection letter under Annexure-A/5 reads as under:

“As per GOI DOP & T OM No.22011/7/86-Estt.(D) dated 3rd July, 1986 seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment on recommendations of the UPSC or other selecting authority. Accordingly, the seniority determined is as per accordance with the DOP&T OM mentioned above.” It is requested that the application be disposed off accordingly.”

3. Being aggrieved by the said order of rejection, the Applicant filed this OA in which he has prayed to quash the order under Annexure-A/3 & A/5 and to direct the Respondents especially Respondent No.5 to reconcile/recast the seniority list dtd. 31.8.2009 showing the applicant above the Respondent No.6.

4. Respondents filed their counter in line with the reply given to the Applicant. The basic stand of the Respondents in their counter, is that the seniority list was prepared based on the position of the rank in the merit list of the candidates prepared at the time of selection. The Respondents contend that as the applicant's name was placed below the Respondent No.6 in the merit list, irrespective of the date of their date of joining, gradation/seniority list at Annexure-A/3 was accordingly prepared showing the name of the private Respondent No.6 above the applicant. According to Respondents there being no infirmity in assigning the position in the seniority/ gradation list of unskilled labourers at Annexure-A/3, this OA deserves to be dismissed.

5. We find from the record that both Applicant and private Respondent No. 6 appeared and got selected out of one advertisement/selection undertaken by the Respondent-Department. From the merit list filed at Annexure-R/4 to the counter, it appears that both of them had secured same marks in all events including in total. Both of them belong to OBC community but the difference is that while applicant joined the post on 29.05.2001, Respondent No.6 on 01-08-2001. In the seniority/gradation list of Unskilled Labourer, published and circulated vide Annexure-A3 dated 31.08.2002, Respondent No. 6 was placed at Sl. No.4 and applicant was placed at Sl.No.5. Applicant submitted representation dated 10th September, 2009.

6. There is no quarrel with the proposition of law laid down that the Authority is bound to respect the comparative merit of the candidates as reflected in the recruitment test between one officer and the other while fixing inter se seniority of the candidates irrespective of the date of joining and no discrimination can be permitted. It is also trite law that inter se seniority has to be reckoned based on the Rules/executive instructions available in the field. This is consistent with the requirement of Articles 14 and 16 of the Constitution of India.

7. We have also perused the GOI DOP & T OM No.22011/7/86-Estt.(D) dated 3rd July, 1986. This instruction of the DOP&T does not take care of a situation as to how the inter se seniority shall be maintained where the candidates secured same marks in open

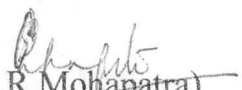


recruitment. In view of the above rejection of the representation stating that seniority list has been prepared as per the DOP&T instruction has led to protracted litigation which could have been avoided had the authority considered the matter with due application of mind. The DOP&T instruction, referred to above, has no application to the instant case. In the above circumstances, in our considered view, the date of entry into a service/continuous length of service would be the appropriate rule for determining the inter se seniority between candidates recruited out of the same advertisement but stood in the same rank. In this context, reliance has been placed on the decision of the Hon'ble Apex Court in the case of **the Direct Recruit Class-II Engineering Officers' Association and others V State of Maharashtra and others**, AIR 1990 SC 1607 cited by the Applicant's Counsel. In the instant case, since the applicant joined duty earlier than Respondent No.6, the Respondent-Department should have shown the Applicant above the Respondent No.6. Having not done so, the order of rejection under Annexure-A/5 is hereby quashed. The Respondent-Department are hereby directed to recast the seniority list under Annexure-A/3 showing the applicant above Respondent No.6 within a period of 60(sixty) days from the date of receipt of copy of this order. In the result, this OA stands allowed to the extent stated above.

There shall be no order as to costs.



(A.K. Patnaik)
Member(Judicial)


(C.R. Mohapatra)
Member(Admn.)