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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


Original Application No. 158 of 2011
Cuttack, this the 28th day of July, 2016

Parsuram Mishra Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00158 OF 2011
Cuttack, this the 28th day of July, 2016

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HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER(A)

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Sri Parsuram Mishra,
aged about 32 years,
S/O Prasant Kumar Mishra,
Vill. Jemadeipur Sasan,
P.O/P.S. Narasinghpur, Dist-Cuttack.

.....Applicant

By the Advocate(s)- M/s. S. Pattnaik, B.R. Kar.

-Versus-

Union of India, represented through

1. Special Secretary-cum-Director,
Aviation Research Centre,
Head Quarter, East Block No.V,
R.K. Puram, New Delhi-110066.
2. Deputy Director(Admn.)
Aviation Research Centre,
At/P.O. Charbatia, Dist-Cuttack.
3. Pratap Chandra Majhi,
Fire Operator,
At- Aviation Research Centre Head Quarter,
East Block No. V, R.K. Puram,
New Delhi-110066.

.....Respondents

By the Advocate(s)- Mr. S. Behera (Sr.CGPC),
Ms. S.Mohapatra (ACGSC)

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ORDER**A.K.PATNAIK, MEMBER (J):**

Instead of going into the great details, it would suffice to state that Respondents issued an advertisement in August, 1997 for filling up of the post of Fire Operators. Accordingly, selection was conducted. Applicant appeared for the said post. Thereafter, Respondents issued the final merit list containing 55 names and a reserve list of General Category of candidates with stipulation to be operated in case any of the candidate drop outs from the select panel. It is the case of the applicant that although three candidates, whose names appeared in the merit list of selected panel, did not join, the Respondents instead of appointing the applicant, whose name appeared at the Sl. No.1 of the reserve list, issued further advertisement for filling up of the left out vacancies. The said action of the Respondents is neither sustainable as per the Cabinet Secretariat letter dated 11.07.1994 nor in law. Hence, by filing this O.A., the applicant has prayed for the following reliefs:

“i. The respondent Nos.1 & 2 may be directed to give appointment to the applicant in the post of Fire Operator as per his position No. 1 in the reserve selection list of 1998 in view of non-joining of three selected candidates having Roll Nos. 173,163 and 170 stated in the selected list under Annexure A/1.

ii. The respondent Nos. 1 and 2 may be directed to appoint the applicant in the post of Fire Operator after removing the respondent No.3 from the post of Fire Operator since he has been placed much below at Rank-9 of the reserve select list meant for general category.

iii. The respondent Nos.1 and 2 may be directed not to take further action in appointing the candidates in the post of Fire Operator who have been selected pursuance to the advertisement dated 10.03.2010 and

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the same advertisement filed under Annexure-A/7 may be quashed.

And pass any other appropriate directions(s)/Order(s) in the interest of justice as would be deemed proper in order to give complete relief to the applicant.”

2. It is also the case of the applicant that similarly situated candidates approached this Tribunal in O.A. No. 310/2009 and this Tribunal on 03.12.2010 disposed of the said O.A. An excerpt from it would run thus:

“Considered the submissions made by Ld. Counsel for both sides and perused the materials placed on record. It is seen that though counter has been filed by the Respondents on 2nd September, 2010 giving assurance to issue offer of appointment to all the Applicants, Respondents’ Counsel is not able to apprise the development, in this regard which have taken place meanwhile. Be that as it may, the Respondents are hereby directed to complete the process and issue the offer of appointment to the Applicants latest by the end of February, 2011.”

3. Respondents have filed their counter contesting the case of the applicant details of which will be dealt into infra at the appropriate place.
4. Heard Ld. Counsels for both the sides and perused the materials placed on record.
5. The Ld. Counsel for the applicant, Mr. S.Pattnaik, placing reliance on the averments made in the O.A. and on the instruction issued by the Cabinet Secretariat as also on the order dated 03.12.2010 in O.A. No. 310/2009 of this Tribunal has submitted that it is a clear case of

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abridging the right to live and the doctrine of promissory estoppel. The Respondents have specifically made a commitment through the advertisement to the candidates that in case a selected candidate from the merit list did not join then the said post shall be filled up out of the candidates whose names have been placed in the reserve list. The applicant being the number one candidate of the reserve list ought to have been offered the appointment but the Respondents instead of adhering to the promises made out to the applicant issued a fresh advertisement on 10.03.2010 for filling up of the left out vacancies of Fire Operators, which is not sustainable in the touch stone of judicial scrutiny. Accordingly, the applicant has reiterated the relief claimed in this O.A.

6. On the other hand, placing reliance on the reply filed by the Respondents, Mr. S.Behera, Ld. Sr. Central Govt. Panel Counsel for the Respondents, contended that at the time of advertisement for filling up of the post of Fire Operators, the reservation quota for Ex-Serviceman was erroneously not mentioned and, therefore, Sri P.C.Majhi, who was Ex-Serviceman and whose name also appeared at Sl. No. 9 of the reserve list of UR category was given appointment against Ex-Serviceman quota after following due procedure. Accordingly, he has strongly denied the allegation of the applicant that the authorities have given appointment to a candidate whose name was below the name of the applicant. Mr. Behera has admitted that while advertising for filling up the post of Fire Operator (now Fire Man), provision for giving appointment to the left out candidate from the selected panel was made. Accordingly, the

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Respondents decided to issue offer of appointment to 14 left out candidates out of the selected panel in accordance with the Cabinet Secretariat circular dated 11.07.1994. As the Cabinet Secretariat circular dated 11.07.1994 does not make it mandatory for the department to operate the reserve panel, the department is under no obligation to issue offer of appointment to the candidates, whose names find place in the reserve list. The reserve list is made to meet the contingency when the recommended candidate does not join the post for one reason or the other. Accordingly, Ld. Counsel for the Respondents have prayed for dismissal of this O.A.

7. We have considered the rival submission of the parties and perused the materials placed on record.

8. Nothing has been highlighted or spotlighted with regard to the specific stand taken by the Ld. Counsel for the applicant that three candidates did not join in the post. However, while perusing the record, we have come across an important aspect of the matter that the present issue had come up for consideration before this Tribunal in another O.A.No. 591/2010 filed by Shri R.K.Paikray and others, which was dismissed vide order dated 14.10.2011. The relevant portion of which is quoted herein below:

“We have heard learned counsel for the respective parties and perused the materials on record. During the course of hearing, Shri G. Rath, learned senior counsel for the applicants submitted that since the vacancies which arose in the year 1998 from part of the impugned advertisement dated 10.03.2010 under, Annexure-A/4, the respondents are estopped to go for fresh selection without exhausting the panel or part panel, as the

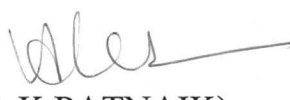
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case may be, prepared in respect of the selection made against the vacancies of the year 1998. Having regard to this submission, Respondents were directed to apprise this Tribunal as to whether the vacancies arose in the year 1998 formed part of the notification vide Annexure-A/4. The Respondents, by producing a letter dated 02.08.2011 have categorically stated that the vacancies advertised for filling up the vacant post of Fireman vide letter dated 10.03.2010 arose due to retirement/promotion in the different years other than the vacancies pertaining to 1998. In this view of the matter, we do not find any force in the contention of the learned senior counsel as mentioned above and accordingly, we hold that the OA is sans merit and the same is dismissed. No costs."

9. From the above and from the letter dated 02.08.2011 addressed by Mr. D. Pattanaik, Jt. Deputy Director (A), ARC, Charbatia, it is made clear that the panel for filling up of the post of Fire Operator (Fire Man) on 10.03.2010 arose due to retirement/promotion in the different years other than the vacancies pertaining to the year 1988. This itself establishes that there was no vacancy for which the panel was issued August, 1997 so as to the applicant to be appointed to the post in question. It is a trite law that due to the non-joining of a selected candidate ^{vacancy} will have to be filled up as per the rules by way of issuing fresh advertisement.

10. In view of the above, we do not find any merit in this O.A. Accordingly, the O.A. is dismissed. No costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)