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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.441 of 2011

Cuttack this the 11<sup>th</sup> day of February, 2015

Sukanta Kumar Swain...Applicant

-VERSUS-

Union of India & Ors. ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the Tribunal or not ? *yes*

  
**(R.C.MISRA)**  
**MEMBER(A)**

  
**(A.K.PATNAIK)**  
**MEMBER(J)**

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CENTRAL ADMINISTRATIVE TRIBUNAL  
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CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Sukanta Kumar Swain  
Aged about 26 years  
S/o. Shyam Sundar Swain  
At/PO-Gatanai, Via-Kunanga  
Dist-Kendrapara

...Applicant

By the Advocate(s)-M/s.S.Rath

D.K.Mohanty

-VERSUS-

Union of India represented through

1. The Commissioner,  
H.D.R.Department of School & Liberacy  
Government of India, A-21,  
Kailash Colony  
New Delhi
2. The Deputy Commissioner  
Navodaya Vidyalaya Sangathan(Regional Office)  
18-Sangrama Colony  
Mahaveer Marg  
Behind Maharani College Hostel  
C-Scheme Jaipur  
Rajasthan
3. Shri Kollanore Jacob Lenin  
S/o. Shri K.C.Jacob  
Roll No.CA-ESM-GEN-210  
Selected for the post of Catering Assistant  
C/o.Principal  
Jawahar Navodaya Vidyalaya  
SIRSA  
Harayana

...Respondents

By the Advocate(s)-Mr.D.K.Behera(Res.1 to 3)



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**ORDER****R.C.MISRA, MEMBER(A):**

Applicant in this Original Application has put forth a complaint against his non-selection to the post of Catering Assistant in Jawahar Navoaya Vidyalaya.

2. The sum and substance of the facts as related in the O.A. are that the applicant is a Physically Handicapped (PH) person, having the educational qualification of + <sup>2</sup>/<sub>3</sub> <sup>P</sup> Arts with three years' Diploma in Hotel Management. In response to a Notification (A/1) issued by Novodayalaya Vidyalaya Samiti (in short Samiti) Jaipur, Rajasthan and having fulfilled the eligibility conditions prescribed therein, he had offered his candidature for the post of Catering Assistant on Direct Recruitment basis. As per the notification, there were seven vacancies in the post of Catering Assistant of which UR(3) and OBC(4). *It was stipulated in the notification that out of the above seven vacancies, two vacancies are reserved for orthopedically handicapped <sup>One arm affected</sup> persons.* It was further stipulated that in case of non-availability of candidates of the above PH category, the vacancies will be filled by candidates from category concerned. According to applicant, he having qualified in the written examination was placed at Sl.No.49 <sup>and</sup> <sup>P</sup> at Sl.No.1 in so far as physically handicapped is concerned. When the applicant was hopefully waiting to get an appointment, to his utter dismay, he



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could come to know that in the final list, name of Respondent. No.3, who is an ex-serviceman <sup>has</sup> is found place in exclusion of his name. Aggrieved with the above action, applicant has moved this Tribunal in the present O.A. praying for the following relief.

- i) To quash the select list under Annexure-A/10, so far as the selection of Resp.No.3 is concerned;
- i) To direct the Respondent Nos. 1 and 2 to appoint the applicant in the post of Catering Assistant
- ii) To pass any other order/orders as deemed fit and proper.

3. Applicant has assailed that he being the physically handicapped candidate available within the zone of consideration as per the stipulation made in the notification, elimination of his name from the final panel without any rhyme or reason, not only infringes the basic condition of notification in so far as PH category is concerned, but at the same time, makes it apparent ~~the~~ as to how the authorities have acted at their whims and fancies in the matter of selection thus violating the reservation policy as mandated for PH category persons.

4. It is the case of the applicant that he having been placed at Sl.No.1 of the list of physically handicapped candidates, his name should not have been erased from that list without any valid and cogent reasons, and therefore, the action of the Respondent-Samiti is arbitrary, whimsical and does not stand to reason.



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5. Applicant has argued that Respondent No.2 being biased has appointed Respondent No.3 against a post of Catering Assistant reserved for PH category and according to him, appointment made to Respondent No.3 being contrary to the conditions of notification, should be struck down and in effect, the applicant should be granted relief sought.

6. Respondent-Samiti have filed their counter-reply contesting the prayer of the applicant in the O.A. Ordinarily, they have not disputed the factual aspects of the matter from the stage of submission of the application by the applicant for the post in question till issuance of notification dated 28.6.2011 (A/10), which is a list of selected candidates, who have been issued with appointment orders for the post of Catering Assistants in the JNVs. However, the whole object of the counter reply according to Respondent-Samiti is that A/8 is not the merit list and it was a list containing the details of candidates called for the interview. According to them, the total number of candidates including the applicant were two and as per the declaration of the result of the written examination, applicant had got Sl.No.2 in the written examination result sheet of PH category. Thus, only two candidates in PH category were called for personal interview and on the basis of the merit pertaining to the written examination, weightage of educational qualification, experience and personal interview, applicant could not figure in the select panel, since he secured the



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minimum marks not only under UR category but in other categories. Hence, the Respondent-Samiti have submitted that the O.A. being devoid of merit is liable to be dismissed.

7. We have heard the learned counsel for both the sides and perused the materials on record. We have also gone through the written note of submissions filed by the learned counsel for both the sides.

8. After the hearing of this matter was concluded on 1.5.2014, certain doubts were entertained regarding the jurisdiction of this Bench to adjudicate this matter and accordingly, the matter was listed under the heading "For Being Spoken To" to get clarification on this point.

9. On the point of jurisdiction, learned counsel for the <sup>applicant</sup> ~~appoint~~ submitted that on 6/12.3.2010, Respondent No.2, viz., Deputy Commissioner, Navodaya Vidyalaya Samiti, Jaipur, Rajasthan made a notification inviting applications for the post of Female Staff Nurse and Catering Assistant on direct recruitment basis. The applicant applied for the post of <sup>e</sup> ~~c~~atering Assistant in response to the said notification against two posts which were reserved for orthopedically handicapped persons. Respondent No.2 had also issued Admission Ticket for which written examination was scheduled to be held on 14.11.2010 and in May, 2011, Respondent No.2 issued a letter to the applicant for interview for this post. However, thereafter, without following the terms and conditions of the



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advertisement, they appointed Respondent No.3 against this post. The learned counsel for the applicant, while arguing on the point of jurisdiction of this Bench has relied on Rule-6 of CAT(Procedure) Rules, 1987, which speaks of "*Place of filing application*". According to Rule-6(1) "*an application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction (i)the applicant is posted for the time being, or (ii)the cause of action, wholly or in part, has arisen*". Further, Rule6(2) provides that "*a person who has ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of the application*".

10. In the case of the applicant, he is not an aggrieved employee of the Government of India. Therefore, the provision regarding the place of posting will not apply to his case. Applicant's counsel however, argued that the applicant is ordinarily residing in the District of Kendrapara within the State of Odisha and he made an application from Kendrapara. Therefore, Rule-6(2) should apply to his case, which enables *the persons whether retired or dismissed to file their applications in the Bench under whose jurisdiction they were residing at the time of filing such applications*. Even though the applicant does not belong to the category of retired and dismissed employee, he has pleaded that his place of residence should be considered for



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deciding the jurisdiction of the Tribunal. Further, the learned counsel has argued that Respondent No.2 issued a letter in May, 2011 in his home address, i.e., At/PO-Gatanai, Via-Kujanga, District-Kendrapara in the State of Odisha regarding attending the interview for the appointment to the post of Catering Assistant. The point asserted by the learned counsel is that this correspondence itself provides the cause of action for the applicant to file this O.A. before this Bench of the Tribunal.

11. In this regard, applicant's counsel has relied on the decision of the Hon'ble Supreme Court in Navin Chandra N.Majithia vs.State of Maharashtra reported in AIR 2000 SC 2966, wherein it has been held that maintainability or otherwise of the Writ Petition in the High Court under Article 226 of the Constitution depends on whether the <sup>ul</sup>case of action for filing the same arose wholly or in part within the territorial jurisdiction of the Court. In order to confer jurisdiction of the particular High Court, the petitioner must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that court.

12. In another decision of the Hon'ble Supreme Court in Oil & Natural Gas Commission vs. Utpal Kumar Basu relied on by the applicant, it has been observed that "cause of action" means the bundle of facts which the petitioner must prove, if traversed, to entitle him a judgment in his favour.





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13. In the case of Y.Abraham Ajit & Ors. vs. Inspector of Police, Chennai & another reported in 2004(8) SCC 100, the Hon'ble Apex Court has held that the cause of action means the circumstances forming the infraction of right or the immediate <sup>occasion</sup> ~~action~~ for the action. In the wider sense, it means, the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also, infraction coupled with the right itself. In other words, the expression, cause of action means "every fact which <sup>it</sup> ~~it~~ would be necessary for the complainant to prove in order to support his right or grievance to the judgment of the Court. Placing reliance on these judgments of the Hon'ble Apex Court, the learned counsel argued that the applicant sent his candidature to Respondent No.2 from the state of Odisha and the Respondent No.2 communicated the admit card for the written test as well as interview to the applicant in his addressed in the District of Kendrapara in the State of Odisha and therefore, the bundle facts being involved in this case, the cause of action partly has arisen within the territorial jurisdiction of this Bench of the Tribunal.

14. On the other hand, the learned ACGSC on behalf of the respondents has argued that the case would fall within the territorial jurisdiction of Jaipur in the State of Rajasthan and would not be therefore, maintainable by this Bench of the Tribunal. It was further submitted by the learned ACGSC that



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 Rule-6(2) of CAT(Procedure)Rules, 1987, puts a complete ban on the jurisdiction of this Bench of the Tribunal to adjudicate this matter.

15. We have considered the submissions of the respective counsels on the point of jurisdiction in the context of the provision of Rule-6 of CAT(Procedure) Rules, 1987, which has already been indicated above.

16. The issue for consideration is whether in accordance with the provision of Rule-6(ii) it can be held that the cause of action wholly or in part has arisen. The learned counsel for the applicant, relying on the decisions of the Hon'ble Supreme Court (supra) has pointed out that the cause of action has to be decided on the basis of a bundle of facts, in so far as the present O.A. is concerned and if it is found that a part of the cause of action has arisen within the jurisdiction of this Bench of the Tribunal, the Tribunal shall have the competence to adjudicate the matter. In this regard, we would like to quote hereunder the relevant observation of the Hon'ble Apex Court in Navin Chandra N (supra).

“Cause of action is a phenomenon well understood in legal parlances. Collocation of the word “cause of action” wholly or in part arises” seems to have been <sup>Q. lifted</sup> derived from Section 20 of the CPC, which Section also deals with the jurisdictional aspect of the Courts. As per that section, the suit could be instituted in a Court within the legal limits of whose jurisdiction the cause of action wholly or in part arises. Judicial pronouncements have <sup>accorded</sup> ~~accorded~~ almost a uniform interpretation of the said compendious expression even prior to the 15<sup>th</sup> amendment of the Constitution as to mean, the

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bundle of facts, which would be necessary for the complainant to prove if traversed in order to support his right to the judgment of the Court".

17. In the present O.A. the facts indicate that the applicant had sent his application in response to the notification to Respondent No.2 from his residence in the District of Kendrapara in the State of Odisha. Annexure-A/9 of this O.A. is a copy of a letter sent by the Deputy Commissioner, NVS, Jaipur, Rajasthan (Res.No.2) of May, 2011 to the present applicant in his address in the District of Kendrapara. In this letter, it was intimated to the applicant that on the basis of the written examination held on 14.11.2010 and after short listing, he has been found to be qualified for the personal interview for the post of Catering Assistant provisionally. Accordingly, he was asked to appear for the personal interview before the Selection Committee on 8.6.2011 at Jaipur in the state of Rajasthan. Thereafter, a notification dated 28.6.2011 was brought out by Respondent No.2 in which it was indicated that on the basis of the personal interview held on 28.6.2011, certain candidates for the post of Female Staff Nurse and Catering Assistants have been selected. Since this list did not have the name of the present applicant, he felt aggrieved and approached this Tribunal with this O.A.

18. Moreover, applicant was a candidate for the post of Catering Assistant under the Union of India. Therefore, he is not an employee under the Government of India. In strict sense,


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Rule-6 stands in his way to approach this Bench of the Tribunal.

✓ However, the question remains as to whether in such a situation the applicant will move the CAT, Jaipur Bench since the notification regarding the filling up of posts and interview etc. had taken place at Jaipur in the State of Rajasthan. In this connection it is to be noted that applicant is a person aggrieved with the selection process for the post in question under the Union of India. Therefore, his grievance is against the action of the Union of India. Making application to the post in question in response to notification issued by NVS, Jaipur, receiving intimations to appear at the written examination as well as personal interview in the State of Odisha are all bundle of facts which clearly indicate that a part of cause of action has arisen within the territorial jurisdiction of this Tribunal.

19. In consideration of the above, we hold that the present O.A. is maintainable before this Bench of the Tribunal.

20. In so far as merit of the matter is concerned, we have gone through the pleadings of the parties. As mentioned above already, the main thrust of the counter is that as per the declaration of the result of the written examination, applicant had got Sl.No.2 in the written examination of PH category and according to counter, two candidates in PH category were called for personal interview. On the basis of the merit pertaining to the written examination, weightage of educational qualification, experience and personal interview, applicant

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could not figure in the select panel since he secured the minimum marks not only under UR category but in other categories.

21. In the written notes of submission filed by the Respondents, it has been submitted that as per recruitment procedure the candidates called for personal interview were on the ration of 1 : 5 for one post, which means - for one post five persons. It has been mentioned that total 5 numbers of candidates attended the written examination and out of five two were called for personal interview. So as per ratio between two one person was selected and has already been appointed in PH category. However, the name of the applicant was kept in the reserved panel and due to non availability of candidate in PH category out of two posts, one post has been filled by Respondent No.3 belonging to general category for having secured the highest in the merit list among the general category candidates.

22. On the other hand, it is the specific case of the applicant that there being two PH candidates available at the time of personal interview and there being two vacancies in Catering Assistant earmarked for PH candidates, the consideration shown by the Respondents is against the terms and conditions as prescribed in the notification. It is the specific case of the applicant that in the notification, it was clearly stipulated that in case of non-availability of PH category candidates, the



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vacancies will be filled by the candidates from category concerned. Therefore, according to applicant, the selection process as has been done by the Respondents is patently illegal and arbitrary.

23. One Kollanore Jacob Lenin, the selected candidate for the post of Catering Assistant has been impleaded as Private Respondent No.3, who has not filed any counter.

24. Having regard to the pleadings of the parties, the short point that emerges for consideration is whether the applicant has a right to be appointed to the post in question.

25. Admittedly, there were two physically handicapped candidates including the applicant <sup>who</sup> were called for personal interview. This is also an admitted fact that seven vacancies for the post of Catering Assistant, (UR-03) and (OBC-04) were notified to be filled up. Out of the above seven vacancies, two vacancies were reserved for Orthopedically handicapped candidates and it was made clear that in case of non-availability of candidates of the PH category, the vacancies will be filled by candidates from category concerned. There is also no dispute that two candidates, viz., one Rehana Begum and the present applicant of PH category did attend the personal interview having been qualified in the written examination, out of which Rehana Begum has been appointed to the post of Catering Assistant and against the another vacancy reserved for PH category, Private Respondent No.3, who is not a PH category,



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has been appointed as a UR category candidate, on the ground that on the basis of the merit pertaining to the written examination, weightage of educational qualification, experience and personal interview, applicant could not figure in the select panel since he secured the minimum marks not only under UR category but in other categories. It has been admitted by the Respondents in their counter that as per the declaration of result of the written examination, applicant has got Sl.No.2 in the written examination result sheet of PH category. In the face of this admitted position, the question arises as to whether there being availability of a PH category candidate against the post earmarked to be filled by PH candidate, the Respondents have rightly selected Respondent No.3 who belongs to UR category candidate. To this, it is the case of the Respondents that as per recruitment procedure the candidates called for personal interview on the ratio of 1 : 5 for one post, which means - for one post five persons were called for personal interview. It is their further submission that total 5 numbers of candidates attended the written examination and out of five two were called for personal interview. So as per ratio between two, one person was selected and has already been appointed in PH category. The proposition advanced by the Respondents is quite absurd and untenable. It is mandated in the notification that in case of non-availability of candidates from PH category, the vacancies will be filled from the categories concerned.



Therefore, there being two vacancies earmarked for PH candidates and two PH candidates being available, nothing prevented the Respondents to appoint the applicant against one of the vacancies earmarked for PH candidate and to adjust him to the category to which he belongs. It is also obvious that the PH candidate selected and appointed has only to be adjusted against the category to which he/she belongs. In the circumstances, the ratio has to be determined with reference to the categories to which the candidates belong and not with reference to category reserved for PH candidates. Viewed from this, there has been a clear infraction of the provisions as laid down in the notification in the matter of selection to the post of Catering Assistant in so far as PH category is concerned. At the cost of repetition, we would say that there being two vacancies earmarked for PH category candidates and admittedly, the applicant having secured his position at Sl.No.2 of the said category, his non-selection to the post in question and in his place selection and appointment of Respondent No.3 belonging to UR category is illegal, arbitrary and hence, does not stand to judicial scrutiny. Therefore, we answer the point in issue in favour of the applicant and against the Respondents.

26. It is relevant to mention in this context that in view of the Respondents' position that applicant could not be appointed because of securing only minimum marks in the selection test, the learned ACGSC was asked to clarify the comparative





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position of marks scored by the applicant vis-à-vis the selected candidates. No information was provided by way of clarification, making the submission of the Respondents vague and unsubstantiated. It is also trite that in the matter of selection, the terms and conditions laid down in the recruitment notification are sacrosanct. In the present case the provision was that only in case of non-availability of candidates of the PH category, the vacancies will be filled up by candidates from category concerned. The Respondents are not authorized to make any whimsical interpretation of this provision, and deviate from the original stipulation which ultimately would adversely affect the rights of the applicant to receive a fair consideration.

27. For the reasons aforesaid, we have no hesitation to quash the selection and appointment of Respondent No.3 to the post of Catering Assistant and at the same time, we direct the Respondents, particularly, Respondent No.1 to issue appointment order in favour of the applicant.

Ordered accordingly.

28. In the result, the O.A. stands allowed. However, there shall be no order as to costs.

(R.C.MISRA)  
MEMBER(A)

(A.K.PATNAIK)  
MEMBER(J)

BKS