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Central Administrative Tribunal
Jodhpur Bench, Jodhpur

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Date of order : 21/2/2007.

1. O.A.NO. 365/99
2. O.A.NO. 366/99

- (1) Amar S/o Shri Bhin Singh, SC, aged about 23 years, R/o Outside Nagori Gate, Kaga Colony, Gali No. 4, Jodhpur (Raj).
- (2) Mohan Lal S/o Shri Bhagirath Meghwal (SC), 21 years R/o Nagori Gate, Gali No. 1, Meghwal Basti, Ramola Road, Jodhpur (Raj).
- (3) Manoj Kumar S/o Shri Sohan Lalji (SC), aged about 19 years, Vill. and Post Bhopalgarh, District Jodhpur (Raj).
- (4) Babu Lal Bhin S/o Shri Ram Dayal (SC), aged about 25 years, R/o C/o Murali Kirana Store, Ganesh Hotel, Ajmer Road, Jodhpur.
- (5) Surender Kumar S/o Shri Sarwan Kumar, Banzara (SC), aged about 25 years, R/o Outside Nagori Gate, Gali No. 1, Meghwal Basti, Ramola Road, Jodhpur.

..... Applicants in OA
365/99

- (1) Devi Singh S/o Shri Basti Ramji, aged about 21 years, Village and Post Jajiwal Kala, District Jodhpur (Rajasthan).
 - (2) Sarwan Ram Rao S/o Shri Dagla Ramji aged about 21 years, Village Jajiwal Kutadi Post Banar, District Jodhpur (Raj).
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- (3) Champa Lal S/o Shri Sona Ramji, aged about years, Village Jajiwal, Kutadi, Post Banar, District Jodhpur (Raj).
- (4) Sarvan Choudhary S/o Shri Rupa Ramji, aged about 23 years, Village Khokariya, Post Banar District Jodhpur (Raj),
- (5) Parsa Ramji S/o Shri Poona Ramji, aged about 24 years, Village and Post Banar, District Jodhpur (Raj).
- (6) Prema Ram S/o Shri Kalu Ramji, aged about 24 years, Village and Post Banar, District Jodhpur.
- (7) Ashok Kumar S/o Shri Tulsi Ramji, aged about 19 years, Village and Post Jajiwal Kala, Dist. Jodhpur.
- (8) Khiya Ram S/o Shri Mohanlalji, aged about 23 years, Village and Post Jajiwal Kala, District Jodhpur (Raj).
- (9) Hari Charan Mehto S/o Shri Mahendra Mehto aged about 26 years, R/o Block No. 201/9, Civil Quarter 19 F.A.D.
- (10) Parsa Ram S/o Shri Natha Ram Bishnoi, aged about 21 years, Village Jajiwal, Bishnoi Ki Dhani, Post Jajiwal Kala, District Jodhpur (Raj).
- (11) Hanuman Ram Bishnoi S/o Shri Bhakar Ramji, aged about 21 years, Village Jajiwal, Bishnoi Ki Dhani, Post Jajiwal Kala, District Jodhpur.



.....Applicants in Of
366/99

Versus

- (1) Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.

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(2) Commandant, 19 F.A.D., Banar, Jodhpur.

(3) Major Y.S.Yadav, Administrative Officer, 19
F.A.D., Banar, Jodhpur.

..... Respondents in both
OAs

.....

CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.A.F.NAGRATH, ADMINISTRATIVE MEMBER

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Mr. S.K.Malik, Counsel for the applicants.

Mr. Kuldeep Mathur, Advocate, brief holder for
Mr. Ravi Bhansali, Counsel for the respondents.

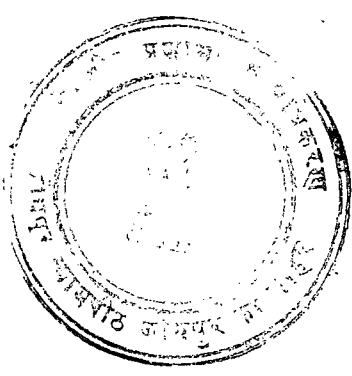
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PER MR.A.K.MISRA, JUDICIAL MEMBER :

In both these O.As, the relief claimed by the applicants and the controversy involved is common, therefore, both the applications are disposed of by one common order.

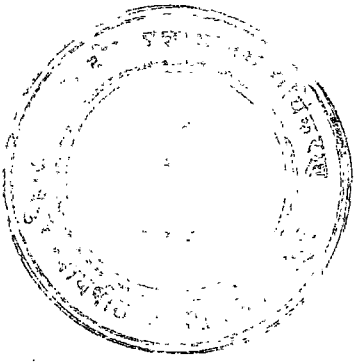
2. In both these applications, the applicants have prayed for quashing the result declared as a consequence of the selection held on 19th November, 1999, for the post of Mazdoors and has further sought a relief to direct the respondents to conduct a fresh selection for the said post.

3. The O.A.No. 365/99, has been moved by SC/ST candidates, alleging that the respondents had advertised 31 posts of Mazdoor on 17th October, 1999. Out of 31 posts



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16 posts were identified for general candidates, 8 posts for OBC candidates, 6 posts for Ex.Servicemen and 1 post for Physically Handicapped candidate, but no post was reserved for the reserved category candidates, whereas, it was obligatory for the respondents to have kept 15% of the advertised posts for the SC candidates and 7.5% of the advertised posts for ST candidates. But, without keeping the posts of Mazdoor reserved for SC and ST candidates out of the notified vacancies, the respondents had declared the result of the selected candidates in which no SC/ST candidate has been selected. Thus, the respondents have violated the rules of service and consequently the result declared by the respondents deserves to be quashed.



4. In both these O.As the applicants have also challenged the legality of the Board of selection which had selected the candidates for filling the posts of Mazdoor. It is alleged by the applicant that the Board was not properly constituted. No officer from *other* Arm / Service was a Member of the Board and consequently, the selection of the candidates by the Board is illegal. Hence, the applicants have prayed for quashing of the selection.

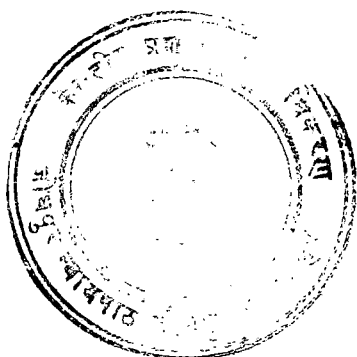
5. Notice of the OAs was given to the respondents who have filed their reply to which applicants of the OA No. 365/99 had filed a rejoinder. The respondents filed a reply to the rejoinder.

6. It is alleged by the respondents that there

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was no short-fall vacancies of SC and ST candidates for purposes of identifying a vacancy for the reserved post candidates. It is alleged by the respondents that the 19 FAD has an authorised strength of 536 Mazdoors (civilian). As per the percentage of candidates, 80 posts of Mazdoor for SC candidates and 40 posts of Mazdoor for ST candidates, can only be kept reserved. As against these posts, 90 SC candidates and 52 ST candidates, are already employed in the FAD and thus no further SC/ST candidate can be selected to fill in the advertised posts. It is also stated by the respondents that there was no illegality in selection of the candidates as alleged by the applicants. The Board was properly constituted and the applicants have availed the opportunity of facing the Board for being selected. However, they remain un-successful in the selection, therefore, they cannot be permitted to challenge the selection on the grounds mentioned above. The OAs are devoid of any merit and deserve to be dismissed.



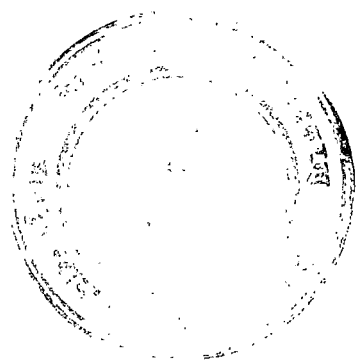
7. We have heard the learned counsel for the parties and have gone through the case files.

8. In OA No. 365/99, the challenge of the selection is on the ground of not identifying vacancies for reserved caste candidates, therefore, it is required to be attended first. The applicants have contended that out of the 31 declared vacant posts for Mazdoor, 5 posts should have been kept reserve for S.C. candidates and two posts for ST candidates. Since

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it has not been done by the respondents, therefore, the selection is bad in law. We have given our consideration to the above contention. In our opinion, the posts of SC and ST candidates are required to be filled-in as per the percentage on the basis of the total cadre and not on the basis of advertised vacant posts. If the cadre is already having requisite number of reserved category candidates as per the percentage then no further recruitment on the post of reserved category was required to be done. The respondents have submitted Annex. R/1 in which the strength of Mazdoors for 19 FAD, has been shown as 536. It is stated by the respondents that as against the authorised strength of ⁸⁰/_{SC} and ⁴⁰/_{ST} candidates as per the percentage, 90 and 52 candidates of the respective categories ^{of}/_{candidates} are working on the said post, hence, there appears to be no short-fall. It must be noted that the reserved category posts are required to be filled-in only when there are short-fall vacancies but ^{if} there are no short-fall vacancies the vacancies are required to be filled-in only by the candidates whose vacancies are in short-fall. Therefore, the contention of the learned counsel for applicants that out of the advertised 31 posts of Mazdoors 5 SC and 2 ST ~~candidate~~ ^{posts} should have been advertised, is without any basis and deserves to be rejected.




9. The learned counsel for the applicants has argued that the selection board was not properly constituted and consequently the selection of the candidates

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made by the respondents is illegal and the same deserves to be quashed. On the otherhand, the learned counsel for the respondents has argued that the applicants have not made the successful candidates^a party-respondents who have in the meantime been appointed by the respondents. Therefore, in the present O.A. the applicants are not entitled to the relief of quashing of the selection on the ground of illegality of the Board. It was also argued by the learned counsel for the respondents that the rights of the appointed candidates would be affected and any order quashing the selection would affect their civil rights. No order affecting the civil rights of such persons could be passed without giving them a hearing and in view of this, the applicants are not entitled to any relief.



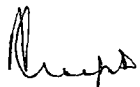
10. We have given our thoughtful consideration to this aspect of the case. As per the guidelines issued by the department, the selection board should have consisted of one officer from other Arm/Services as Member of the Board with other officers of the formation. In this case, no outside officer was a Member of the Board and consequently selection board cannot be said to be a properly constituted board. However, the selected candidates have been appointed way back in January to March, 2000 and no steps were taken by the applicants to make all or any one of them a party in these O.As. In this regard, we were shown by the learned counsel for the respondents a communication from the respondents about the appointments of the selected candidates. Therefore, quashing of the selection would mean depriving

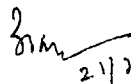
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the appointed candidates of their employment and livelihood. Such order if passed, would amount to depriving them of their livelihood without giving an opportunity of hearing to them and thus, it would be violative of principles of natural justice. It would also not be just to direct the respondents to terminate their services after almost one year of their employment on the ground of selection board being improperly constituted. By not making parties to such successful candidates, the applicants have not been vigilant about their rights and consequently, we would not like to undo the selection. It may also be mentioned that all the applicants had faced the same interview board. Had they been selected and appointed, they would probably not have challenged the constitution of the board. But having failed to make their mark they are attacking the constitution of the board which according to the settled principles of law they cannot be permitted to do so now.

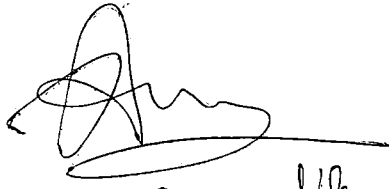
11. In view of the above, the applicants are not entitled to any relief. Both the applications are, therefore, required to be dismissed and are hereby dismissed with no order as to cost.


(A.P. NAGRAHI)
Adm. Member


(A.K. MISRA)
Judl. Member

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Mar 22
22.2.2001

Ree

S. K. Mallick
Adh
20/2/01

Part II and IN destroyed
in my presence on 21.3.07
under the supervision of
section officer (I) as per
order dated 19/2/07


Section officer (Record)