

7

Central Administrative Tribunal
Principal Bench

O.A. 1219/99.

New Delhi this the 26th day of August, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Rish Pal,
S/o Shri Choal Singh,
R/o B-5/260, Panchwati Colony,
New Delhi. Applicant.

By Advocate Shri Hori Lal.

Versus

The Union of India, through
The Director General of Audit,
Central Revenue, Indraprastha Estate,
New Delhi-110002. Respondent.

By Advocate Shri M.K. Gupta.

O R D E R (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant had filed a number of earlier applications before the Tribunal. In this application, he has sought a declaration that his termination from service by an oral order passed by the respondents is illegal and for a direction to the respondents to grant him appointment to the post of Peon, prior to any other person being appointed to the post, who had not been selected in the interview on 14.5.1996.

2. The brief relevant facts of the case are that the respondents issued a Notification dated 13.11.1995 for appointment to Group 'D' post. The applicant had also submitted his application on 21.11.1995. The respondents have stated that they received as many as 647 applications in total, which after preliminary screening were reduced to 468 of eligible candidates and at that time there were 24 vacancies. As the number of applicants were ^{too} much as compared to the

-2-

(8)

available vacancies, they have stated that they conducted a screening test on 18.4.1996 in which the applicant had also appeared. Thereafter, a personal interview was held in which the applicant also appeared. Based on the performance of the candidates in the interview, 24 candidates were appointed in May, 1996 against the notified vacancies and the respondents had admittedly prepared a waiting list of candidates in which the applicant's name also figures.

3. The learned counsel for the applicant has relied on the affidavit filed by the respondents in reply to CP 143/96 in which they have stated that the waiting list of candidates was drawn up for filling up few vacancies likely to arise due to drop-outs in the original list. Shri Hori Lal, learned counsel, has also submitted that even though CP 143/96 was dismissed by Tribunal's order dated 15.10.1996 (Annexure 'E'), that dismissal was wrong as the applicant's appointment letter dated 22.10.1996 (sic) only appointed him as daily-wage labourer and not as a regular Peon. He submits that the order of the Tribunal dated 15.10.1996 is erroneous. He has also submitted that later, the applicant filed CWP No. 3237/98 on 7.7.1998 in the Delhi High Court, where the learned counsel for the official respondents had pointed out that the applicant had not sought for regular appointment of Peon. Learned counsel for the applicant also submits that he had also filed upgradation list on 20.8.1998 (Annexure 'G') which has ~~also~~ been filed along with the present O.A. His contention is that at least three of the persons who have been appointed in May, 1996 were 30 years and above, and the contention of the learned counsel for the respondents that the applicant is over-aged is not justified. The applicant's counsel has also submitted that it was only on the submissions made by the learned counsel for the respondents that they would consider

js

(A)

absorbing the applicant after giving him age relaxation that he had withdrawn the petition (CW No. 3237/98) with liberty to approach this Tribunal. He has also further contended that he withdrew the petition pending before the Hon'ble High Court as the learned counsel for the official respondents had submitted that the gradation list which has now been placed at Annexure 'G' had not been placed before the High Court or the Tribunal earlier when the cases were pending and in particular in OA 2422/95 and CP 143/96. It is also noted that there was another O.A. filed by the applicant (OA 343/98) which was disposed of by Tribunal's order dated 29.5.1998 in which also the applicant was not able to place the gradation list which he now relies upon. Shri Hori Lal, learned counsel, has submitted that the applicant has, therefore, a legal right to be appointed on a regular post of Group 'D' as he had appeared in the interview in May, 1996 and was placed in the waiting list. This list, he claims, was valid for at least one year from 21.5.1996 whereas the respondents have issued the requisition for filling up vacancies on 16.5.1997 i.e. within one year of the issuance of the panel.

4. The respondents have controverted the above submissions and I have also heard Shri M.K. Gupta, learned counsel. Learned counsel has submitted that the O.A. is not maintainable as it is clearly barred by limitation and secondly on the ground that the applicant cannot claim an enforceable right for appointment to the post of Group 'D' merely on the basis that his name has been placed in the waiting list prepared in 1996. He has drawn my attention to Annexure R-1 giving the details of the various applications, including CPs and C.W.P. filed by the applicant in this Tribunal as well as in the Hon'ble High Court. He has submitted that when the High Court's order dated 28.4.1999 was

13

passed permitting the petitioner to withdraw the petition with liberty to approach the Tribunal and the petition was dismissed as withdrawn, no observation had been made that liberty had been granted to the applicant to reagitate the matter afresh without regard to the facts and various orders passed by the judicial forum¹² pertaining to the applicant's claims. Learned counsel has also submitted that in the interview held in May, 1996 for 24 notified vacancies which were available at that time, the applicant's name did not appear in the merit list as his name figured at the bottom of the waiting list. He has also submitted that when the respondents became aware of the settled law as pronounced by the Supreme Court in *Ashok Kumar Vs. Chairman Banking Service Recruitment Board* (1996(1) SCC 283) and *Shri Hoshiar Singh Vs. State of Haryana* (AIR 1993 SC 2606) and the relevant instructions issued by the Headquarters, the respondents had decided not to operate the waiting list in the next recruitment year of 1997. He has, therefore, submitted that in the facts and circumstances of the case, the applicant cannot be considered for appointment to the Group 'D' post of Peon based on his position in the waiting list as prepared in May, 1996 for the vacancies which have arisen in 1997, as the 24 notified vacancies have already been filled up earlier. So far as the grievance of the applicant vis-a-vis the three other persons whose names appeared¹² at Serial Nos. 29-31 in the gradation list of Peon .. as on 1.3.1997 is concerned, Shri Gupta, learned counsel, has also submitted that even in this O.A. the applicant has not made them parties¹² or challenged their appointment orders on the basis of his position in the waiting list prepared in May, 1996.

5. I have carefully considered the pleadings and submissions made by the learned counsel for the parties.

18.

11

8

6. As mentioned above, the applicant has filed a number of earlier applications before the Tribunal as well as the contempt petitioners alleging non compliance of the Tribunal's orders which have been disposed of and, in particular, the contempt petition (CP 143/96) has been dismissed by Tribunal's order dated 15.10.1996. In the circumstances, the contention of Shri Hori Lal, learned counsel, that this order is erroneous and has been passed because the respondents mislead the court cannot be accepted at this stage as this order has become final. He has not availed of the available remedy of appeal for setting aside the order of this Tribunal dated 15.10.1996 in accordance with law.

7. The order of the High Court dated 28.4.1999 in CW No.3237/98 had given the liberty to the petitioner to approach this Tribunal. Although in the earlier order dated 4.2.1999, the High Court had directed the respondent's counsel to intimate the court as to why the petitioner has not been absorbed till date and why age relaxation has not been given, that fact has not been reflected in the later order dated 28.4.1999. Apart from that, the contention of the learned counsel for the applicant that it was only because he managed to produce the gradation list pertaining to the appointment of Peon as on 1.3.1997, that the liberty was given to the petitioner to approach this Tribunal is also not evident from the orders of the Hon'ble High Court. The applicant's claim in the present application is that a direction may be given to the respondents to appoint him in the post of Peon based on the selection and interview held on 14.5.1996. Admittedly, the applicant was placed in the waiting list panel and 24 selected persons who were placed

18

12

above him in the select panel have been appointed against the 24 notified vacancies. It is also relevant to note that the respondents have stated that the applicant's name appeared at the bottom of the waiting list of 16 candidates and it is not the case of the applicant that the other 15 persons above him have been appointed against the earlier notified vacancies. In *Shankarsan Dash Vs. Union of India & Ors.* (1991(3)SCC 47), the Hon'ble Supreme Court has held that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do not acquire any indefeasible right to be appointed against the existing vacancies. In the present case, the applicant was admittedly placed only in the waiting list and that too at the bottom of the list. The judgement of the Supreme Court in *Ashok Kumar's case (supra)* is also relevant. In *Madan Lal & Ors. Vs. The State of J&K & Ors.* (1995(2)SLR 209), the Supreme Court has held that if requisition for recruitment is for 11 vacancies and the merit list prepared is for 20 candidates, the moment 11 vacancies are filled in from the merit list, the list gets exhausted, or if during the span of one year from the date of publication of such list all the 11 vacancies are not filled in, the moment the year is over the list gets exhausted.

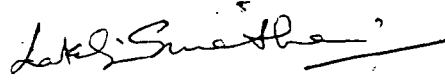
8. In the present case, the respondents have submitted that all the 24 notified vacancies against the interview which was held in May, 1996 have been filled and the impugned Notification of 16.5.1997 was for future vacancies. Therefore, in the facts and circumstances of the case, the contention of the learned counsel for the applicant that the waiting list prepared in May, 1996 remains valid till all the candidates appearing in that list are exhausted

13

cannot be accepted in the light of the settled position of law as seen from the judgements of the Supreme Court, referred to in Para 7 above.

9. The contention of the applicant that the gradation list of Peons as on 1.3.1997 shows the names of three other persons, who had been appointed, who were also over-aged, will not assist him. The O.A. suffers from the basic defect of non-joinder of necessary parties as other persons who have been appointed earlier and who are likely to be affected have not been impleaded. Therefore, on this ground also, this application is liable to be dismissed. It is also not the contention of the learned counsel for the applicant that 15 other persons above the applicant in the waiting list have since been appointed either against the earlier notified vacancies or in the future vacancies, to give him a right for consideration for appointment to the regular post of Group 'D'. I have also considered the other contentions of the learned counsel for the applicant but do not find any merit in the same.

10. For the reasons given above, I find no merit in the O.A. and it is accordingly dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'