

Central Administrative Tribunal
Principal Bench

O.A. No. 2054 of 1998

New Delhi, dated this the 13th February 2002

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)

Jagan Nath
Laskar,
S/o late Shri Chhedi Lal,
Pass No. 56 ASP/276,
Air Force, Faridabad. .. Applicant

(By Advocate: Shri J.C. Malik)

Versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block,
New Delhi-110011.
2. The Chief of the Air Staff,
Vayu Bhawan, Air Headquarters,
New Delhi-110011.
3. The Air Officer Commanding-in-Chief,
HQ Maintenance Command,
Indian Air Force,
Nagpur.
4. The Group Captain (Commanding Officer),
No. 56, ASP Force,
Faridabad.
5. Lakshmi Chand,
Laskar,
No. 56 ASP, Air Force, .. Respondents
Faridabad.

(By Advocate: Shri M.M. Sudan for R-1 to 4
Shri A.K. Bhardwaj for R-5

ORDER

S.R. ADIGE, V C (A)

Applicant impugns respondents' order dated 22.6.98 (Annexure A) cancelling the reversion order issued to Respondent No. 5 Shri Lakshmi Chand, Lascar in the background of the Tribunal's order in O.A. No. 2569/92 and reinstating him as Assistant Store

Keeper (ASK) w.e.f. 18.2.91. He seeks a direction to respondents to revert Respondent No.5 and to promote him (applicant) to the aforesaid vacancy of ASK with consequential benefits.

2. On 21.4.90 respondents released a vacancy of ASK (Group C) in 56 ASP, Faridabad for being filled up on the basis of selection through a departmental competitive examination confined to eligible Class IV employees, vide their letter of even date (Annexure C). The instructions for filling up the post are contained in respondents' circular dated 25.11.83 (Annexure D) whereby those who obtained the minimum qualifying marks fixed by the unit authority for passing the examination would be placed in a panel in accordance with seniority and respondents' circular dated 6.5.86 (Annexure E). 40% marks were fixed as the qualifying percentage of marks for promotion from Group D to Group C with reference to LDCs and those who secured the aforesaid percentage of marks in the qualifying examination were to be promoted on the basis of their seniority in Group 'D'.

3. In May 1990 respondents held the aforementioned examination for making selections to the post of ASK in which applicant secured 52% marks, one Shri Daya Ram secured 53% marks and Respondent No.5 secured 60% marks. It is not denied that

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applicant is senior to Respondent No.5, but despite his being senior, Respondent No.5 was given appointment as ASK vide order dated 12.7.90.

4. Thereupon applicant lodged a protest representation on 14.7.90 upon which the Headquarters Maintenance Command issued letter dated 20.10.90 (Appendix G) in- ter alia pointing out that the qualifying marks of 60% fixed by the Examination Board was inordinately high, and should have been fixed at 50%, and that even in professional examinations ^{such as} Institute of Cost and Works Accountants, Company Secretaryship, Chartered Accountants, LLB etc. the qualifying ~~examination~~ ^{marks were} 50%. As applicant was the senior most, the appointing authority was advised to demote Respondent No.5 and promote applicant in his place, as ASK as he had secured more than 50%.

5. Thereupon Respondent No.5 was reverted to his substantive post of Lascar (Group D) vide respondents' order dated 18.2.91.

6. He challenged the aforesaid order dated 18.2.91 in O.A. No. 2569/92 which was heard by this very Bench and was allowed by order dated 31.12.97 for the reason that although the impugned order dated 18.2.91 involved civil consequences, it had been issued without putting Respondent No.5 to notice and giving him an opportunity of being heard.

Accordingly the impugned order dated 18.2.91 was quashed and set aside leaving it open to Respondents to take action in accordance with law.

7. Thereupon applicant in the present O.A. filed CWP-1465/98 in Delhi High Court which was dismissed on 26.3.98 after observing that no injustice had been done to applicant as the Tribunal's order dated 31.12.97 had left it open to respondents to take action in accordance with law.

8. Thereupon Respondent No.5 was asked to show cause against his reversion vide Notice dated 29.5.98 (Annexure N).

9. Respondent No.5 submitted his reply to the aforesaid notice, upon which the Officer Commanding 56 ASP, Faridabad (Respondent No.4) cancelled the reversion order of Respondent No.5 and reinstated him as ASK w.e.f. 18.2.91 vide impugned order dated 22.6.98 which was confirmed by subsequent order dated 27.7.98 (Annexure O).

10. Thereupon applicant in the present filed CWP No. 3612/98 in Delhi High Court against Respondents' order withdrawing the reversion of Respondent No.5. That CWP was dismissed by order dated 11.8.98 (Annexure P) without expressing any opinion on the merits of the case, with the observation that applicant should first approach C.A.T. if so advised.

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11. Thereupon applicant had filed the present O.A. which was initially dismissed summarily by order dated 30.10.98 but on appeal vide CWP No. 308/99 the aforesaid order was set aside and the matter has been remanded back to the Tribunal by Delhi High Court's order dated 19.1.2001 for disposal on merits and in accordance with law.

12. We have heard Shri J.C. Malik for applicant, Shri Sudan for official respondents and Shri A.K. Bhardwaj for private respondent No.5 who was applicant in O.A. No. 2659/92.

13. On behalf of private respondent No.5 it was urged that it was the prerogative of the unit authority to fix the minimum qualifying marks and if he fixed the same at 60%, it warranted no judicial interference. We are unable to agree with the contention. It cannot be denied that the selection was based upon a departmental qualifying examination and not a departmental competitive examination. Those eligible candidates who secured the qualifying marks were brought on to the select panel in order of seniority. In respondents' circular dated 6.5.86, for appointment from Group D to Group C posts, the qualifying marks has been fixed at 40%, while in Respondents' letter dated 20.10.90 the unit authority was informed that the qualifying marks was 50%. There are no materials to support the proposition that the qualifying marks were to be 60%, and under the circumstances, the letter dated 20.10.90

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correctly pointed out that 60% qualifying marks was inordinately high, when even in professional examinations the qualifying marks ~~were~~ ^{are} 50%. We are of the considered opinion that fixation of qualifying marks at 60% for the aforesaid departmental examination for appointment of eligible Group D personnel as Assistant Store Keeper (Group C) was wholly unreasonable and arbitrary and therefore warrants our judicial interference.

14. In the result the O.A. succeeds and is allowed. The impugned order dated 22.6.98 is quashed and set aside. If Respondent No.5 can be adjusted against any other suitable equivalent vacancy, that should be done, failing which he should be reverted from the post of Assistant Store Keeper to his substantive post within two months from the date of receipt of a copy of this order. However, as he has worked on the post of Assistant Store Keeper for so long, he shall be entitled to pay protection upon his being reverted to his substantive post, to be absorbed in future increments. Within the aforesaid period of time, Applicant's claim for appointment as Assistant Store Keeper against the aforementioned vacancy of Assistant Store Keeper should be considered by respondents in accordance with rules and instructions, and upon such consideration, if he is found fit for promotion, he should be so promoted, upon which he will be entitled to notional pay fixation as Assistant Store Keeper w.e.f. 12.7.90,

but without payment of arrears as he has not actually discharged the duties and responsibilities of the aforementioned post of Assistant Store Keeper during this period. Official respondents will also pay costs of Rs.5000/- to applicant.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)

Vice Chairman (J)

S. R. Adige

(S. R. Adige)

Vice Chairman (A)

karthik