

Central Administrative Tribunal
Principal Bench

O.A.No.1708/95

Hon'ble Shri R.K.Ahooja, Member(A)
Hon'ble Shri Syed Khalid Idris Naqvi, Member(J)

New Delhi, this the 1st day of September, 1999

1. Shri Kesar Singh
s/o Shri Jeet Singh
r/o C/o Sh. Shivraj Singh
Post Office Vasant Kunj
New Delhi - 70.
2. Shri Sukhbir Singh
S/o Shri Mange Ram
r/o Village & P.O. Sunari Kalan
District Rohtak (Haryana).
3. Shri Raghubir Singh
S/o Shri Devi Singh
r/o Village & P.O. Saidpur
Distt. Sonapat (Haryana). ... Applicants

(By Ms. Kusum Sharma, Advocate)

Vs.

1. Govt. of National Capital Territory of Delhi
through its Chief Secretary
5, Shyam Nath Marg
Delhi - 110 054.
2. The Development Commissioner
Govt. of National Capital Territory of Delhi
5/9 Under Hill Road
Delhi - 110 054.
3. Shri Ganesh Dutt, Forest Guard
through the Development Commissioner
Govt. of National Capital Territory of Delhi
5/9 Under Hill Road
Delhi - 110 0054.
4. Shri Kamal Kishore, Forest Guard
through the Development Commissioner
Govt. of National Capital Territory of Delhi
5/9 Under Hill Road
Delhi - 110 0054.
5. Shri Raj Pal Singh, Forest Guard
through the Development Commissioner
Govt. of National Capital Territory of Delhi
5/9 Under Hill Road
Delhi - 110 0054.
6. Shri Vijay Kumar, Forest Guard
through the Development Commissioner
Govt. of National Capital Territory of Delhi
5/9 Under Hill Road
Delhi - 110 0054. ... Respondents

(By Shri Rajinder Pandita, Advocate)

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O R D E R (Oral)

Hon'ble Shri Syed Khalid Idris Naqvi, Member(J)

By means of this application, Shri Kesar Singh, Shri Sukhbir Singh and Shri Raghbir Singh have come under Section 19 of the Administrative Tribunals Act, 1985, alleging that their juniors Shri Ganesh Dutt, Shri Kamal Kishore, Shri Raj Pal Singh and Shri Vijay Kumar had been posted as Forest Guard ignoring the right of the applicants to be posted. ~~As such,~~ The applicants have alleged that they are working as Mali on regular basis since August, 1988 in the employment of Respondents No.1 and 2 and they are entitled to be considered for appointment to the post of Forest Guard in the pay scale of Rs.775-1025 with all consequential benefits, ^{but} ~~thus~~ the respondents No.1 and 2 instead of considering them and appoint them in the post of Forest Guard, appointed Respondents No.3 to 6 vide impugned Office Orders dated 9.5.1994, even though they were junior to the applicants ^{for} being appointed as Mali ~~and have been appointed~~ regularly in 1991.

2. The respondents controverted the application ^{& mainly} ~~merely~~ on the ground that the post of Forest Guard was out of Direct Recruitment and the posts are to be filled from:

- (a) Candidates from among the surplus employees of D.R.D.A. & D.S.M.D.C. etc.
- (b) failing, U.B.S. Volunteers,
- (c) failing, retrenched Census employees
- (d) failing, Departmental candidates
- (e) failing Candidates in the panel.

See.

3. But we find that out of ¹~~57~~7 approved candidates the respondents No.3 to 6 have also been appointed which goes to show that departmental candidates were also considered in this recruitment. The applicants have clearly mentioned in their application that they are entitled to be considered for appointment to the post of Forest Guard in the pay scale of Rs.775-1025 but we do not find any clear denial by the respondents in their reply. On the facts and circumstances as mentioned above and considering the arguments placed from either side, we are of the view that the applicants should also have been considered in the process for appointment to the post of Forest Guard as there was no denial on the part of the respondents that they were not entitled to be considered for the post and it is quite evident that departmental candidates were also considered for this appointment.

4. The learned counsel for the respondents has drawn our attention to Page 3 of the counter. Wherein the following statement has been made:

"Accordingly a total of 119 candidates were issued interview letters including the names sponsored by Employment Exchange, Census employees and other departmental candidates. Interview were held on 7.4.1994 and 8.4.1994 and S.S.B. approved for 7 candidates and 4 candidates were kept in waiting list.

Keeping in view the above mentioned facts the plea of the petitioners is baseless because the department has given adequate opportunity to all the employees including petitioners/applicants of this application."

5. It is the contention of the learned counsel for the respondents that ^{as mentioned in} this part of the reply, the case of the applicants has been duly considered. We are not in agreement with the

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contention of the learned counsel for the respondents. What has been stated is that the department has given "adequate opportunity to all the employees including petitioners/applicants of this application." It does not state whether the names of the applicants have been considered as Departmental candidates nor has been stated that the case of the applicants was considered at the time of selection and that they were not found suitable. We do not therefore find any basis for the assertion that the applicants have been duly considered.

6. With this view, we allow the application with direction that the respondents shall also consider the applicants for the post of Forest Guard and, if they are found fit to be so appointed, ^{to say} and they be given seniority as against their juniors, i.e., Respondents No.3 to 6, ^{so they} but will not be entitled for any financial benefits. No order as to costs.

Syed Khalid Idris Naqvi

(SYED KHALID IDRIS NAQVI)
MEMBER(J)

R.K. Ahooja

(R.K. AHOOJA)
MEMBER(A)

/RAO/