

CENTRAL ADMINISTRATIVE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI.

ORIGINAL APPLICATION NO. 1909/95.

9

Wednesday, this the 8th day of September, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri J.L.Negi, Member(A).

Narender Pratap,
House No.85,
Samaipur Badali,
Delhi.
C/o.Mrs.Avnish Ahlawat,
Advocate, 243, Lawyers'
Chamber, Delhi High Court,
New Delhi.

... Applicant.

(By Advocate Ms.Vithu Mahajan)

Vs.

1. Union of India, through
Government of National Capital
Territory of Delhi through
its Chief Secretary,
5 Alipur Road,
Syam Nath Marg,
Delhi.

2. Medical Superintendent,
E.S.I. Corporation Hospital,
Basai Darapur,
Delhi.

... Respondents.

(By Advocate Mr.G.R.Nayyar)

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed their reply. We have heard the learned advocate Ms.Vithu Mahajan for the applicant and the learned counsel Mr.G.R.Nayyar for the respondents.

2. The applicant had applied for the post of Driver of a Motor Vehicle in the office of the second respondent. The applicant was not selected. The applicant belongs to OBC, but it appears the second respondent has selected a general candidate. The applicant's case is that he has

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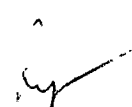
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all the necessary qualifications for the said post and he belongs to OBC community and entitled to be appointed for the post. The action of the administration in appointing a general candidate is illegal. Therefore, the applicant prays that the respondents be directed to call the applicant for the interview and then select and appoint him as a Driver under the category of OBC and for other consequential benefits.

3. The respondents in their reply have stated that the post in question was filled up by a general candidate. It is stated that the recruitment against reserved post (viz. OBC) was not made as no candidate was sponsored by the Employment Exchange as per their non-availability certificate dt. 4.5.1995. They have further stated that the applicant can take his chance at appropriate time for being considered against reserved vacancy. It is also stated that the applicant failed to pass the ^{Trade} Driving/Test conducted by the Selection Board and he was not found fit to be selected, hence it is stated that the applicant is not entitled to any of the reliefs prayed for.

4. It was argued on behalf of the applicant that though the applicant ^{was} had registered as a General candidate in the Employment Exchange, he belongs to OBC category and therefore he is entitled for appointment in the post of Driver. But, the stand of the respondents is that the Employment Exchange gave a non-availability certificate and therefore they have filled the post by a general candidate and applicant will be considered as and when the reserved post is filled up. It may be, that the applicant

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11


has produced some documents to show that he belongs to OBC category, but his registration in the Employment Exchange was for the general category. Since there was no response from the Employment Exchange for the reserved category, the post has been filled up by a general candidate. The applicant cannot ask for a direction for filling up that post. Even otherwise, the respondents have stated that the applicant did not pass the Trade Test before the Selection Board and hence he cannot be appointed. The respondents have placed before us the letter dt. 21.7.1995 which shows that the applicant could not be appointed since he was not found fit for the post of Ambulance/Staff Car Driver by the Selection Board. But, the applicant's counsel submitted that the applicant has been considered as a general candidate and that if he had been considered as an OBC candidate then the applicant could have been selected for the said post of Driver. We do not want to express any opinion on this point, since the post has been filled up as a general post and not as a reserved post.

5. There is one more reason as to why we cannot give any relief to the applicant. As already ~~been~~ pointed out, no direction can be given to the respondents to consider the name of the applicant for appointment unless we quash the appointment of the general candidate. The general candidate is not made as a party respondent in this case. Therefore, when the post has already been filled ^{up} and the incumbent is not made a party, no relief can be given to the applicant.

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However, the applicant can always apply as and when the post is advertised or notified for a reserved category of OBC and in such a case, the administration will consider the case of the applicant as per rules.

6. In the result, the application is dismissed. However, this order is without prejudice to the right of the applicant to again apply whenever the department advertises or notifies the post for reserved category of OBC for the post of Driver. In such a case, the administration will consider the case of the applicant as per rules and on merits. No order as to costs.


(J.L. NEGI)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.