

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~T.A.~~ No. 2143 of 1996 Decided on: 2-1-78

Shri Kanji RamApplicant(s)

(By ~~Shri~~ Mrs. Meera Chhibber Advocate)

Versus

U.O.I. & AnotherRespondent(s)

(By Shri S.M. Arif Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALI, MEMBER (J)

1. Whether to be referred to the Reporter or not? 94
2. Whether to be circulated to the other Benches of the Tribunal? —

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 2143 of 1996

New Delhi this the 2nd day of ~~December~~ ^{January}, 1998

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Kanji Ram
S/o Shri Nanak Chand,
R/o 1878, Lodi Road Complex,
New Delhi.

...Applicant

By Advocate Mrs. Meera Chhibber.

Versus

1. Union of India
through Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi.

2. Superintending Engineer,
Coordination Circle,
C.P.W.D.,
I.P. Bhawan,
New Delhi-110 002.

..Respondents

By Advocate Shri S. Mohd. Arif.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

By an order passed in O.A. No. 808 of 1996 filed by 8 applicants claiming appointment for the post of Work Assistants under the direct recruitment quota, after being successful in the process of selection, the respondents were directed to take further action in pursuance of the list of selected candidates including the applicants in those cases and to offer appointments to them subject to the availability of vacancies and their being suitable for such appointments. The applicant in this case was not one of the parties in the aforesaid O.A. He was, however, in the select list of candidates who have qualified in the trade test as notified by

D

the respondents in November, 1995. The applicant states that although in the counter-reply filed by the respondents in the aforesaid O.A., the respondents had admitted the availability of vacancies and although he had been placed in the position No.15 in the select panel, respondents had not given him the appointment. The applicant relies on the Office Memoranda of the respondents dated 6.10.1993, Annexure P-1 by which respondents notified the filling up of vacant post of Works Assistant under 25% quota. The respondents had notified that 19 candidates were qualified in the trade test for appointment to the said post by their O.M. dated 10.11.1995. According to the applicant although the vacancies were available, he being in position No.16 in the seniority list, has been deprived of such appointment. His contention is that appointments were not given earlier because of the pressure from the Union and this matter was considered in the aforesaid O.A. and the respondents were directed to make the appointments subject to availability of vacancies and as it was an admitted position as stated in the order that there was no dispute regarding vacancies, respondents had no reason for not appointing the applicant.

O

2. The respondents in their counter-reply have stated that in pursuance of the directions in the aforesaid O.A., promotions were given to 4 applicants as per availability of vacancies, suitability and also the roster point for reserved seats. In reckoning the number of vacancies, they had to take into account the 10% cut in the sanctioned strength imposed by the Government of India. Therefore, the respondents submit that 4 persons have already been appointed as per the select panel and suitability, and the applicant also will be appointed in his turn. They have also clarified that the actual position

W

of the applicant in the select panel has been shifted from S.No.15 to 16 as another candidate Shri Uttam Chand whose candidature was withheld for want of some documents was later on declared successful and has come on merits at S.No.9 in the list and consequently the applicant's position was shifted to S.No.16. The applicant thereupon contested the claim of the respondents that the sanctioned strength has to be curtailed by 10% and wanted clarification whether the cut was to be imposed on fresh appointment/promotions on work charged establishment or on the whole department. According to the applicant, even after 10% cut, it would mean only reduction of 2 posts and even then, 18 persons should have been appointed out of 20. When the matter came up for hearing, at the instance of the Court, the respondents filed an additional counter-reply explaining the computation of vacancies and also the authority for imposing the cut of 10%.

3. We have perused the affidavit and heard the counsel for the parties.

4. It is admitted that respondents notified 10 vacancies under direct recruitment quota in 1990 through Employment Exchange, which included SC-2, ST-1 and unreserved 7 vacancies. In 1995, they conducted a trade test and declared that 19 persons were qualified in the trade test under direct recruitment quota. 8 applicants in the above list filed the O.A. No. 808 of 1996. Applicant, although one of the successful candidates in the aforesaid trade test was, however, not one of the applicants in the above case. As stated above, the respondent were directed to offer appointments subject to availability of vacancies. By the Office Memorandum dated 30.8.96 annexed as Annexure to the additional affidavit, the

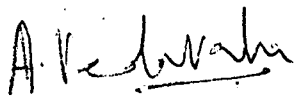
Superintending Engineers of each Coordinate Circle under the respondents were asked to draw out a detailed cadre strength and apply a 10% cut imposed by the Government by their order dated 15.12.1995. It was stated further that if the cut had not been achieved till the issue of the aforesaid order, then they were directed first to achieve that 10% cut and thereafter meet the requirement of filling up of vacant post over and above 10% cut in fulfilment of the aforesaid direction. The respondents submit through their additional counter-reply that as against the sanctioned strength of 90 in the 'A' Region, under the Superintending Engineer Coordination Circle CPWD, a cut of 10%, namely, 9 posts was imposed. Taking into account the number of vacancies at the time of appointment in 1996 including the notified vacancies of 10 in 1990, there were 14 vacancies and they had to adjust a cut of 10% out of this, which would leave the net vacancies to 5 out of which one was for the ST candidate. Accordingly, the 4 vacancies have been filled in accordance with the directions of the Tribunal in the aforesaid case.

5. Taking all these facts into account, we are satisfied that the respondents have not denied the offer of appointment. They have only stated that the offer of appointment will be made as and when vacancies become available as the present 4 vacancies have already been filled. It may also be pointed out that although the applicant is a qualified candidate it has been made clear in the respondents circular dated 10.11.1995 that mere passing of the test does not by itself confer any right on the appointment to the post and appointment shall be in accordance with the rules and instructions and also subject to availability of vacancies. What is notified is a declaration of the results of those

Candidates who have qualified in the trade test. This does not constitute even a panel of selected candidates. Even in the case of preparation of select list and empanelling of candidates, it is a settled law that no right to appointment would accrue and it has been laid down that empanelment is at best a condition for eligibility for appointment and does not by itself amount to selection or create a vested right to be appointed unless the relevant service rules say to the contrary. Vide State of Bihar and Others Vs. Secretariat Association Union, JT 1993(6) SC 462 and also Jai Singh Lal and Others Vs. Union of India, 1993 (24) ATC page 788. The respondents even now maintain that the case of the applicant will be considered in his turn on the basis of the his qualifying the trade test in his turn.

6. In the light of the foregoing, we see no merit in the application. The application is accordingly dismissed. It goes without saying that as per the admission of the respondents on their own, the applicant can look forward to his appointment in his turn when the vacancy becomes available.

No costs.



(DR. A. VEDAVALLI)
MEMBER (J)



(K. MUTHUKUMAR)
MEMBER (A)