

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

(22)

O.A. No. 161/97
T.A. No.

199

DATE OF DECISION 6.5.98

Ms. Amita Sood

Petitioner

Sh.K.N.R.Pillai

Advocate for the Petitioner(s)

Versus

UOI M/O Personnel and others

Respondent

Sh.P.S.Mahendru

Advocate for the Respondent

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman(A)

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

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal.
Tribunal. No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 161/97

New Delhi this, the 6th day of May, 1998

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Ms. Amita Sood,
D/o Dr. S.C. Sood,
02/356, Janak Puri,
New Delhi.

... Applicant.

By Advocate Shri K.N.R. Pillay.

Versus

1. Union of India,
service through Secretary,
Ministry of Personnel Affairs,
New Delhi.
2. Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
3. Secretary,
Union Public Service Commission,
Dhaulpur House, New Delhi. ... Respondents.

By Advocate Shri P.S. Mahendru.

O R D E R

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

The applicant is aggrieved by the letters issued by the respondents dated 31.5.1994 and 22.6.1994 by which they have informed her that on the basis of the Engineering Services Examination, 1992 (hereinafter referred to as 'the ESE, 1992') and as per her choices indicated, she could not be allotted to any service due to her lower merit position.

2. The applicant has filed MA 202/97 for condonation of delay. It is stated, inter alia, that she had originally filed Civil Writ Petition No. 2316/94 before the Delhi High Court which on the question of jurisdiction was transferred to the Tribunal and the case was earlier registered as TA No.1/96. Thereafter, the Delhi High Court allowed the

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prayer of the petitioner to withdraw the petition with liberty to approach the Tribunal. Having regard to the reasons mentioned in the application for condonation of delay and the facts of this case, we are satisfied that this is a fit case where the delay should be condoned and we do so.

3. According to the respondents, there were total 11 services in the Civil Engineering stream, out of which the applicant had given her preference only for five of those services, namely, IRSE, IRSS (Civil), CWES (Civil), CES & SIS-A (Civil). The applicant who had appeared for the ESE, 1992 had secured 137th rank in the Civil Engineering stream. The respondents have submitted that because of her position in the merit list i.e. 137th rank, she could not be allotted to any service of her choice due to her lower merit position, as all the candidates allotted to the above 5 services had secured higher merit positions. They have also stated that some candidates lower in merit to the applicant have been allotted to the Border Roads Engineering Services (BRES) but she being a lady candidate was ineligible for this service. It is this provision that the applicant has challenged stating that Respondent 2 had acted arbitrarily in infringing her fundamental right to be considered for a post for which she merited and was recommended but has not been given because she is a lady. In Ground(d) of the application, she has stated that the respondents having failed to give the applicant a service/post in the category I of the Civil Engineering Service to which she was entitled as per her own preference, or allocated/absorbed in a service/post at their discretion. In the circumstances, the applicant has sought a direction

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to the respondents to allocate her a service/post in any of the services/posts in category-I with consequential benefits, including seniority, service benefits, salary, damages and cost of the application.

4. The Delhi High Court in the earlier CWP 2316/94 filed by the applicant had by order dated 9.9.1994 directed that 'one vacancy in Civil Engineering Group was not to be filled upto ²⁸ ~~the~~ further order of the Court'. The learned counsel for the applicant had prayed for a similar relief when this O.A. was filed in the Tribunal, in the circumstances mentioned above. The Tribunal by interim order dated 24.2.1997 has, taking into account the interim order passed by the Hon'ble High Court, directed that 'the vacancy referred to in the said interim order shall be kept vacant, 'if any vacancy in the said group was available as on that day. With this modification, the interim order already passed by the Hon'ble High Court was restored'.

5. The respondents in their reply have submitted that the applicant having secured 137th rank could not be allotted to any service on the basis of ESE, 1992. They have stated that since she had given less preferences in accordance with the rules, her name was considered for allocation for Border Roads Engineering Service after allocation of other general candidates to the services. They have referred to Rule 2 (NB-I) of the notified rules of ESE, 1992 which is reproduced below:

"Candidates are advised to indicate all the services/posts for which they are eligible in terms of the Rules in the order of preferences in their application form. In case a candidate does not give any preference for any service/post or

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does not include certain services/posts in his application form it will be assumed that he has no specific preference for those service/posts, and in that event he/shall be allocated to any of the remaining services/posts in which there are vacancies after allocation of candidates according to the services/posts of their preference. In making such allocation, the candidate shall be considered first for Group 'A' services/posts and then for Group 'B' services/posts"

6. According to the respondents, since the applicant had given less preferences and could not be allotted to any of the 5 services she had chosen due to her lower merit position, her case was skipped in the first round. The candidates ranking after 137 who were otherwise eligible were allocated to the Border Roads Engineering Service (BRES) as the vacancies were available in that service. When the applicant's turn came for allotment in the second round, as the vacancies were still existing in this service, she was considered for allotment to BRES but being a lady candidate Rule 16(vii), Appendix III of the Notified Rules came in her way. This rule provides as follows:

"Ladies are ineligible for appointment in Border Roads Engineering Service Group 'A' in view of the extension of the provisions of Section 12 of the Army Act to this service".

They have, therefore, submitted that the rejection of her candidature for allotment to the Civil Engineering Services, according to her merit position in the ESE, 1992 was in order, as under the rules she could only be allotted to BRES which was not open to her as a lady candidate.

7. The applicant has filed rejoinder in which she has again assailed the stand taken by the respondents. She has submitted that in the case of the General Reserve Engineering Force (GREF), there is a specific notification

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applicable to that service u/s 12 of the Army Act, 1950 whereas there is no such notification in the case of BRES. Therefore, she has submitted that there is no statutory prohibition for recruitment of ladies in the BRES and, therefore, the rejection of her candidature should be set aside. She has also submitted that both in the Army, Navy and Air Force, there are regular Doctors and other lady professionals who are serving there and there is no reason why she should not be recruited to the BRES which has both civilian as well as Army personnel. Shri Pillay, learned counsel has also vehemently submitted that the respondents have admitted that Border Roads Organisation (BRO) have a few units located in New Delhi, Pune, Calcutta, Pathankot, Chandigarh, etc. He alleged that the male members of the Service want to keep these plum positions for themselves thus depriving the applicant her fundamental right for equal treatment on the ground of her sex when she is otherwise qualified.

8. We have carefully considered the pleadings and submissions of the learned counsel for the parties.

9. Section 12 of the Army Act, 1950 provides as follows:

"12. INELIGIBILITY OF FEMALES FOR ENROLMENT OR EMPLOYMENT. No female shall be eligible for enrolment or employment in the Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxillary to the regular Army or any branch thereof in which females are eligible for enrolment or employment".

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10. The respondents rely on the Notification SRO 329 dated 23.9.1960 and SRO 37 dated 25.1.1985, copies placed on record. Shri Mahendru, learned counsel, submits that SRO 37 of 1985 shows that the General Reserve Engineering Force (GREF) is a Force raised and maintained in India to which the provisions of Section 12 of the Army Act apply. Further, he submits that under Schedule 'C' of SRO 329, the Director General Border Roads is given the power and duties of an officer commanding an Army in respect of the Members of the GREF under his command and jurisdiction. According to him this shows that the BRO is also an Army unit to which the provisions of Section 12 of the Army Act extend, thereby making ladies ineligible for enrolment and employment in that Organisation. We are unable to agree with the contention of Shri Mahendru, learned counsel that the BRES ~~service~~ which admittedly consists of both Army personnel and civilian officers in the engineering field, is a purely Army Unit to which the provisions of Section 12 of the Army Act apply. The proviso to Section 12 of the Army Act itself provides that nothing contained in the section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the regular Army or any branch thereof in which females are eligible for enrolment or employment. SRO 329 of 1960 relied upon by the respondents has been issued under the provisions of Section 4(1)(4) and not Section 12 of the Army Act. It is not disputed that the GREF is a Force under the provisions of this Act. Schedule 'C' of the Notification provides that the Director General, Border Roads shall exercise or perform in respect of Members of the said Force under his command the same powers of an officer

commanding an Army. The Director General Border Roads being given powers and duties of an officer commanding the Army/GREF in certain circumstances does not mean that the BRO/BRES is an Army Unit. On the other hand, an argument could be advanced that this special provision was required because the Director General Border Roads could also be a civilian and not from the Army/GREF. In spite of several adjournments being granted for the purpose, the respondents have, however, failed to produce any Notification/Rule relating to the Constitution, duties and powers of the BRO or BRES, which is the service under consideration here.

11. The applicant has contended that the information given to the candidates is not a statutory rule barring ladies from entry into BRES which can defeat her fundamental right to equality of treatment guaranteed under the Constitution of India. The respondents are relying upon SRO 329/60 and SRO 37/85 to reject the claim of the lady candidate on the ground that the Border Roads Organisation essentially deals with the construction of border roads which service is not suitable for ladies. But they have not denied the fact that the Border Roads organisation have officers both from GREF i.e. the Army officers and Civilian officers from the Border Roads Engineering Service. The respondents have also not denied the fact that even though the Border Roads Engineering Service might be dealing with ² Border Roads in some inhospitable regions of the country generally, there are a few units of the Service located in New Delhi, Pune, Calcutta, Pathankot, Chandigarh, etc. If this is so, the applicant being a lady does not invariably have to be posted at all times in inhospitable border regions and respondents could very well make necessary

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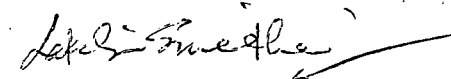
adjustments without adversely affecting her interests or the interests of the Service in any way. In this connection, the contention of the learned counsel for the applicant that positions in these cities are being denied to ladies only to favour the male officers cannot entirely be ignored. Much water has flown down the river Ganges after the SROs of 1960 and 1985 relied upon by the respondents have been published. It is a fact that qualified lady personnel have now been employed even as Pilots in the Indian Air Force and the Army themselves have employed lady Doctors in the Medical Corps and other personnel in their Para-Military organisations and so on for a number of years. Therefore, having regard to the fact that the Border Roads Organisation consists of both military as well as civilian officers, we see no good reason to deny the applicant appointment in a suitable post in one of the units of BRES in the cities mentioned above. In the circumstances, we are unable to accept the contention of the learned counsel for the respondents that the Border Roads Engineering Service is a Force which is a part of the regular Army in which appointments of ladies are excluded. It is also relevant to note that the proviso to Section 12 itself enables ladies to be appointed in auxiliary and branch services attached to the regular Army.

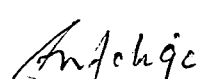
12. In the above facts and circumstances of the case, we do not see merit in the other objections raised by the respondents. The information to candidates barring ladies from BRES cannot be relied upon, to deny the applicant's right to equality guaranteed under Articles 14 and 16 of the Constitution. All things being equal, and applicant having qualified on merit position 137 in ESE, 1992, for being placed in the BRES, the respondents cannot

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discriminate against her on the ground of sex and arbitrarily reject her claims. Accordingly, Rule 16(vii) of ESE, 1992 is quashed and set aside as ultravires of Articles 14 and 16 of the Constitution.

13. For the above reasons the O.A. succeeds and is allowed. Respondents are directed to take further action to appoint the applicant in the vacant post in BRES in category I in accordance with her merit position in ESE, 1992, within one month from the date of receipt of a copy of this order. She shall be entitled to consequential benefits in accordance with law/rules, but not to any salary for the period she has not actually worked. In the circumstances, there is no order as to costs.


(Smt. Lakshmi Swaminathan)
Member(I)


(S.R. Adige)
Vice Chairman (A)

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