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Central Administrative Tribunal
Principal Bench, N. Delhi.

O.A. 1658/94

New Delhi, this the 18th of January, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

1. Shri O.P.Singh,
S/o Late Shri Ram Raj Singh
2. Shri Harinder Singh
s/o Shri Mula Singh &
3. Shri Nagendra Kumar Pandey,
s/o Shri Bachanoo Panday
all I.O.W. (Hort.) under C.A.O.
Construction, Northern Railway,
Kashmeri Gate, Delhi.

Applicants

(By Shri B.S. Mainee, Advocate)

Versus

Union of India : Through

1. The Secretary,
Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Shri Madan Singh,
I.O.W.(Hort) 131/11, D.C.M.Rly Colony,
Delhi.
4. Shri Hari Kishan Sharma,
I.O.W. (Hort).,
Northern Railway,
Near Rly. Swimming Pool,
New Delhi.

Respondents

(By Shri Shyam Moorgani, Advocate).

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

The applicants are I.O.W. Grade-III in the Railways in the grade of Rs. 1400-2300/- They have earlier been engaged as Sub-Overseas Mistries in the same grade, and were given promotion in the same grade as I.O.W. Grade-III. These applicants are diploma holder in horticulture and the next promotional post is Assistant Engineer (Hort.).

2. Their grievance is that by notification issued on 19th April, 1994 the respondents are undertaking a selection for the post of Assistant Engineer (Hort.) stating therein that they are holding it in pursuance of a direction issued by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi in O.A. No. 1449/89 by its order dated 19th September, 1989 in the case of Shri D.S. Rana & Others Vs. UOI and others. This notification lays down that those employees working in the grade the minimum of which is Rs. 1400/- and higher group 'C' grades provided they have rendered not less than three years of non-fortuitous service in the grade and have reached the pay stage of Rs. 2050/- as on 30.6.1989. In addition they should have a degree/diploma in horticulture and acquired a minimum of 5 years of experience in the field.

3. In this application the applicants jointly prayed for the grant of the reliefs that respondents be directed to hold the selection in accordance with the extant rules and the applicants be also allowed to appear in the said selection for the post of Assistant Engineer (Hort.).

4. On notice the respondents contested this Application and in the reply stated that they are holding the selection in compliance with the direction given by the Central Administrative Tribunal, Principal Bench, New Delhi in an earlier decision in the case of Shri D.S.Rana Vs. Union of India & Others decided on 19th September, 1989. Their stand is that in terms of the instructions contained in the letter dated 28th August, 1988, applications from the employees working in grade minimum of which is Rs. 1400/- and higher group 'C' grades provided they had rendered not less than 3 years of non- fortuitous service in the grade as on 31.7.1988 and have reached the pay stage of Rs. 2050/- were called for, for filling up one post of Assistant Engineer (Horticulture). On receipt of the said applications Shri D.S.Rana, Madan Singh and Hari Kishan were required to take part in the written examination scheduled to be held on 30th June, 1989 in Headquarters' office at Baroda House, New Delhi. All the three above named employees appeared in the written test held on 30th June, 1989 and qualified the same. They were also directed to take part in the Viva-voce test which was scheduled to be held on 10th August, 1989. However, before the result of the above examination could be declared Shri D.S.Rana filed an application before the Central Administrative Tribunal (CAT), Principal Bench, New Delhi for direction to the respondents against reserving the post of Assistant Engineer (Horticulture) for Scheduled Caste/Scheduled Tribes as also for quashing the office order dated 2nd June, 1989 in so far as it altered the recruitment rules and minimum qualifications is prescribed in the said letter dated 28th August, 1988. The Central Administrative Tribunal by its judgement dated 18th

December, 1989 decided as follows :-

"In compliance with the Tribunal's Judgement dated 19.9.1989, hold a fresh selection in accordance with the un-amended rules dated 28.8.1988 as interpreted by the Tribunal in the judgement. In the interest of justice, all persons who were eligible to appear for written test and viva-voce for the selection to the post of Assistant Engineer(Horticulture) as on 30.6.1989 should be given an opportunity to appear in the written test and viva-voce by holding a fresh selection. It should be indicated to all concerned that the selection for the post of Assistant Engineer(Horticulture) is the General category and it is not reserved for SC/ST. The respondents shall comply with the above directions ⁱⁿ with a period of four months from the date of this order".

5. The Chief Engineer decided to hold written test for the post of Assistant Engineer (Hort.) on 27th August, 1994 as per the directions given by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.No. 1449/89 and found that the present applicants do not fulfil the qualification as regards the instruction laid down at the relevant point of time as none of them had reached the stage of pay 2050/- in the scale of Rs. 1400-2300/- so the applicants are not eligible and the application filed by the applicants has no merit for consideration and liable to be dismissed. The applicants have also filed the rejoinder reiterating the facts already stated and averred in the Original Application.

6. We heard Shri B.S. Mainee and Shri Shyam Moorjani counsel of both the parties at length. Shri Shyam Moorjani for respondents undertakes to file his Power on the instructions from the department as Shri H.K. Gangwani is not available. The first contention of the learned counsel

for the applicant is that the respondents are themselves at fault in not carrying the directions given in the decision of the O.A. No. 1449/89 by the Central Administrative Tribunal that direction was to be complied within a period of four months but inspite of the fact that the petitioner in that case Shri D.S.Rana expired sometimes in 1993 and even during his life time compliance has not been made for the aforesaid direction. In view of this changed circumstances, since the selection is being notified again in August, 1994, that those who have, by the time, become eligible with respect to the amended rule of 203.1 of I.R.E.M., Volume-I where the eligibility to take the selection has now been that the persons in the scale of 1400-2300/- by only at the stage of 1640/- is also eligible to take the selection for the post of Assistant Engineer (Hort.) a group 'B' post.

7. We have scrutinised that contention of the learned counsel for the applicant but we are not respectfully agreeing with him for the reasons that the selection which was notified in 1988 has not been carried out and three incumbents i.e. Rana (Now dead) and two others had already taken that written test and also qualified for the viva-voce test, but it was because that there was only a single post and that was held to be reserved for Scheduled Castes/Scheduled Tribes, O.A. 1449/89 was filed to undo that reservation which was, according to the petitioner, Shri D.S.Rana, against the law. It was argued in this case that single post cannot be a reserved

post for Scheduled Castes/Scheduled Tribes and should be treated as a general post for which every eligible person according to the contention lays down, can appear. The contention of the learned counsel for the applicant is that the respondents had already delayed the selection for four years or more which would not, by itself, undo the notification issued in August, 1988. It is also because of the fact that those who became eligible at that relevant point of time when the vacancy arose have not been considered having 3 years of non-contiguous service even so on reaching the stage of 2050/- and it was/because a single post was reserved for Scheduled Castes/Scheduled Tribes which denied them the benefit of fair selection. Thus the contention of the learned counsel of the applicants that those who have become eligible subsequently also become eligible to appear as per earlier notification for selection notified in August, 1988, cannot be accepted.

8. Learned counsel for the applicant has placed reliance on a decision of the Supreme Court of India in the case of Union of India & Others Vs. Yoginder Singh reported in 1994(27 ATC) Page 746. In that case Yoginder Singh came before the Central Administrative Tribunal stating that a post which has fallen vacant in May, 1990 before the eligibility conditions were amended should be allowed to be filled by the relevant rules at that point of time as subsequently in September, 1990 when the post was notified, the educational qualifications were upgraded as B.Sc (Chemistry) and the diploma of Health Inspectors. Had the post been filled up prior to September, 1990, Yoginder Singh would have been eligible for the post of

Health Inspector. The Tribunal considered his claim favourable but the UOI in appeal quashed the order of Tribunal on the ground that no candidate who does not possess the currently ^{laid down} educational qualification, who may possess the educational qualification prescribed earlier can be said to qualify or have any vested right to appointment even against some earlier unfilled vacancy. Every candidate, who aspires to fill any vacancy must possess the educational qualification that are then prescribed.

9. A careful study of the aforesaid authority goes to show that if the recruitment rules are amended and the eligibility either on the ground of educational qualifications or otherwise is modified then the persons who were eligible earlier on the basis of the un-modified qualification cannot aspire to take the selection for appointment to that post. In the present case the notification of August, 1988 actually has been carried out but the selection could not be completed because of a decision staying the selection in O.A. No. 1449/89 and subsequently directing the respondents to complete the process of selection keeping the solitary reserved post as un-reserved. It is a fact that the respondents did not carry out the direction within stipulated period but that does not wash out the direction issued to the respondents in the aforesaid decision of the Principal Bench, New Delhi in OA No. 1449/89 decided on 19th September, 1989 that still holds the field today. The notification of August, 1994 has been issued as per direction of the Tribunal given in the aforesaid Judgement. If any beneficiary of the judgement did not file a contempt petition

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to enforce the respondents to comply within the stipulated period than that by itself will not undo the direction issued in that judgement. No other point has been argued in this case. We find no merit in this Application. The application is dismissed as devoid of merits leaving the parties to bear their own costs. The respondents are free to hold the written test and viva-voce test for making the selection for the post of Assistant Engineer (Horticulture).


(B.K. SINGH)
MEMBER (A)


J.P. SHARMA
MEMBER (J)

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