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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1920 of 1994

New Delhi this the 29th day of May, 1995

Mr. A.V. Haridasan, Vice-Chairman
Mr. K. Muthukumar, Member(A)

1. Shri Ajit Kumar Singh
 2. Shri Vijinder Kumar
 3. Shri Sri Lal
- ..Applicants

By Advocate Shri Vivekanand

Versus

1. Council of Scientific & Industrial Research,
A society Registered under
the Societies Registration Act,
1860, through its
Joint Secretary,
Rafi Marg,
New Delhi-110001.
 2. The Director General of
Scientific & Industrial Research,
CSIR,
Rafi Marg,
New Delhi.
 3. Central Board Research Institute
Through the Director,
CRRI,
Mathura Road,
New Delhi.
 4. Shri Krishana Paswan
Lower Division Clerk,
Personnel Cell,
CRRI,
Mathura Road,
New Delhi-20.
- ..Respondents

By Advocate Shri A.K. Sikri

ORDER (ORAL)

Mr. A.V. Haridasan, Vice-Chairman

The applicants 1 to 3 commenced their service as Peons under the Central Road Research Institute, New Delhi with effect from 13.12.1979, 18.01.1980 and 20.03.1982 respectively. The 4th respondent commenced his service as Peon with effect from 19.03.1982. 20% of the vacancies in the cadre of LDCs in the National

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Lab. under the Institution, according to the recruitment rules, is to be filled by considering the eligible Group 'D' employees for promotion. Out of 20%, 10% is to be filled by seniority-cum-fitness and the remaining 10% on the basis of the departmental competitive examination from amongst those Group 'D' employees who are matriculate and who have rendered 5 years of regular service. One vacancy in the cadre of Lower Division Clerks in the first category arose in July, 1993. When the respondent Nos. 1 to 3 initiated action to notify the vacancies amongst the Group 'D' employees, the applicant No.1 made a representation to the third respondent requesting that the post may be filled by considering the Group 'D' employees who are eligible on the basis of seniority-cum-fitness without holding any test. His representation was turned down by order dated 7.10.1993 at Annexure A-7 of the application stating that in order to assess the suitability, it was necessary to hold a typing test. Pursuant thereto, the applicants as well as the 4th respondent applied for the typing test which was held on 23.09.93. ^{Alleging} that there were certain irregularities in the manner in which the test was held principally ^{where} the venue of the test was changed from conference hall to personal section and the Controller who should be present at the venue of the examination remained absent and ^{this} was done with a view to favour the 4th respondent, who was working in the personal section, the applicants made a complaint to the third respondent requesting that the test ^{be} ~~should~~ be cancelled and a fresh test ~~should be~~ ^{be} held in accordance with the rules. As certain

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allegations were made in regard to the manner in which the test was held, it was directed that a fact finding committee should go into the allegations. The fact finding committee after recording the statements of all concerned, submitted its report. The third respondent after receipt of the report, cancelled the test and notified the vacancy calling upon the intending candidates to appear for a fresh test by his order dated 23.12.93. Aggrieved by this, the 4th respondent submitted a representation to the Director General and the Director General, it appears, on a perusal of the report of the committee and the connected records came to the conclusion that there was nothing wrong in the manner in which the typing test was held and directed the third respondent to proceed to hold a DPC on the basis of the results of the typing test held on 23.09.93. Consequently, on the recommendations of the DPC by the impugned order dated 24.09.94, the 4th respondent was ~~selected~~ and appointed as a Lower Division Clerk. It is aggrieved by this appointment ^{and} ~~selection~~ of the 4th respondent that the applicants have filed this application under Section 19 of the Administrative Tribunals Act, 1985. The applicants contend that once the competent authority, namely, the respondent No.3 has cancelled the typing test, it was not open for the respondents to make appointments on the basis of the test which was cancelled without holding a fresh test in pursuance to the order dated 23.12.93. The action of the respondents in appointing the 4th respondent was ^{calculated} ~~purely~~ in view to give undue favour to the 4th respondent at the behest of the National Commission for Scheduled Castes and Scheduled Tribes ^{contend} ~~condemns~~ the applicants. Under these circumstances, the applicants pray that the impugned order of appointment of 4th respondent is ^{be set aside} ~~bad~~ and the respondent Nos. 1 to 3 be directed to fill up the vacancies after holding a fresh test.

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The respondents were served with notices. Respondent Nos. 1 to 3 have jointly filed a reply statement and the 4th respondent has also filed a reply. The respondent Nos. 1 to 3 contend that after receipt of the report of the fact finding committee, though the committee opined that there was nothing wrong in the manner in which the test was held, the Director on 23.12.93 decided to cancel the test and to hold a fresh test and that the proposal in this behalf was sent to the Director General. The Director General, CSIR on a consideration of the entire facts and circumstances decided that, that there was nothing wrong in the conduct of the typing test and, therefore, directed the holding of the DPC for appointment to the post of LDC on the basis of the results of the typing test held on 23.09.93 and ^{for} it was under these circumstances on the recommendations of the DPC, the 4th respondent was appointed. They have also stated that a complaint from the National Commission for Scheduled Castes and Scheduled Tribes was received ^{by} ~~from~~ the Director General. Nonetheless, the respondents contend that as the action was taken in accordance with the rules and as no irregularity or illegality was committed in holding the typing test, a judicial intervention in the matter is not called for.

We have gone through the pleadings in this case and as we wanted to satisfy our judicial conscious that the action was taken by the respondents in good faith, we called upon the counsel for the respondents to make available for our perusal the relevant records relating to the report of the fact finding committee as also the order of the Director General. We perused the documents which were made available to us. A reading of the report of the fact finding committee makes it abundantly clear that there was absolutely no irregularity

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committed in holding of the test though the venue of the test was for administrative convenience shifted from the conference hall to the personal section. We are not in a position to understand why the Director even inspite of such categorical statement made by the committee, cancelled the test held on 23.09.93 and ordered holding of a frest test. We are also

satisfied that the Director General has rightly directed the third respondent to proceed with the holding of the DPC on the basis of the results of the test held on 23.09.93, As the Director General was convinced with the materials on record that no illegality or irregularity was committed and no prejudice was caused to the applicants, The learned counsel for the applicants argued that since the Director has already cancelled the test held on 23.09.93 and issued a notification calling upon the intending candidates to participate in the test to be held, the decision of the Director General to revalidate the cancelled test and to make appointment on the basis of the said test is vitiated by non-observance of the principles of natural justice. Since the order of the Director cancelling the test and throwing upon the vacancies to all the remaining candidates, according to the learned counsel, conferred on the applicants a vested right which could be divested after giving them an opportunity to show cause ~~against them~~. We are not persuaded to accept this argument. The Director General is competent to take a decision at variance with the decision taken by the Director as the Director General, CSIR, is the administratively superior authority ² ~~than~~ the Director of ~~the independent~~ ~~roles~~. As the third respondent had forwarded the proposal

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for cancellation of the test already held and for holding a fresh test, the Director General had examined the entire ^{matter} ~~material~~ on record and found that such a decision was not warranted from the circumstances of the case and, therefore, directed that the vacancy should be filled by holding a DPC on the basis of the result of the test which was held. In these circumstances, we are of the considered view that no vested right of the applicants had been divested entitling them of showing cause against ^{on} the decision of the third respondent to cancel the typing test. The applicants were not aggrieved but the aggrieved person was only the 4th respondent. Even without waiting for a complaint by the ^{fourth} ~~third~~ respondent, though the same from the National Commission for Scheduled Castes and Scheduled Tribes was received, the Director General on a careful examination held that the decision of the Director was not justified in the circumstances of the case. No allegations of any mala fides have been levelled against the Director General. The Director General has not been impleaded in his personal capacity. Therefore, we are not in a position to find that there is any infirmity in the order of the Director General and also the consequential order of appointment of the 4th respondent.

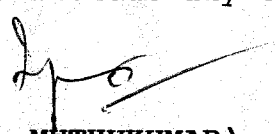
It is necessary to consider ^{whether} the case of the applicants ^{that} ~~though~~ it was not necessary at all to have a test held as ^{the} ~~a~~ vacancy was one which should have been filled by promotion of the Group 'D' employees on the basis of the seniority-cum-fitness. ^{is correct} The Group 'D' employees who applied for the post were all peons.

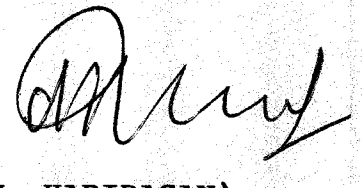
The vacancy was ~~only to be filled up for~~ the post of Hindi typist. Hindi typing is ^{essential for} ~~requisite for the purpose~~ of the ^{performance of his duties of} ~~test~~ for that post. Therefore, it is necessary that a typing test to adjudge ^{the} ~~their~~ suitability ^{for} ~~for~~ the ~~post is held~~. This aspect was clarified and the ^{candidate to hold the post is held}

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respondents have informed the applicant N. lin ^{reply} receipt
of ^{his} ~~his~~ ^{representation} application as early as on 7.10.93. The
applicants did not deem it necessary to impugne that
communication and subjected themselves to the typing
test. Under these circumstances, there is no force
in the contention that it was not necessary to hold
a typing test.

In the light of what is stated above, we do
not find any merit in the application and, therefore,
the same is dismissed at the admission stage itself
but without any order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(A.V. HARIDASAN)
VICE CHAIRMAN (J)

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