

## CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2265/2000

New Delhi this the 11th day of September, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMN)

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Virender Kumar,  
S/o Sh. Bhagwan Dass,  
R/o H.No.190, Street No.2,  
Block-A, East Gokulpur,  
Loni Road, Delhi-94.

-Applicant

(By Advocate Ms. Anuradha Priyadarshani)

-Versus-

1. Union of India through  
the Secretary (Home),  
Ministry of Home Affairs,  
North Block, New Delhi.
2. Secretary,  
Ministry of Atomic Energy,  
North Block, New Delhi.
3. Director General,  
Bhabha Atomic Research Centre,  
Trombay, Maharashtra.
4. Director,  
Bhabha Atomic Research Centre,  
Rare Materials Project,  
Yelwal, Mysore, Karnataka.
5. The Chief Administrative Officer,  
Bhabha Atomic Research Centre,  
at Yelwal, Mysore, Karnataka.

-Respondents

(By Advocate Shri K.C.D. Gangwani)

O R D E R (ORAL)By Mr. Shanker Raju, Member (J):

Applicant assails non-promotion to the post of Scientific Assistant 'B' (Mechanical) RMP, Bhabha Atomic Research Centre and has sought appointment to the post with all consequential benefits.

2. Applicant, in pursuance of an advertisement for one post of Assistant Mechanical 'B' applied, being the last attempt as he would have attained the age of 25 years. In pursuance thereof, he was called for interview and out

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of 35 candidates before the Interview Board on 8.2.99 he was placed in the merit list. He received letter dated 6.1.2000 from the respondents for police verification which he filled up completing all the formalities on 20.1.2000. As nothing was heard from the respondents he sent several representations, including reminders to the respondents. Having not responded the same, present OA is filed.

3. The contention of learned counsel Ms. Anuradha Priyadarshini, appearing for the applicant is that despite completion of all formalities and the applicant being in the top of the merit list has not been appointed which is violative of Articles 14 and 16 of the Constitution of India.

4. In the rejoinder as well as additional affidavit filed by the applicant it is contended that though the interview was held only for lone post applicant should have been appointed against the same in general category. It is further stated that as the advertisement was for one post respondents empanelled five candidates whereas against four available vacancies appointment letters have been issued but the case of the applicant was not considered and his verification was inordinately delayed. Had this been completed in time applicant would have been appointed. She also alleges specific allegation against R-5 who has been repelled regarding demand of Rs.50,000 by Chief Administrative Officer to issue a letter of appointment to the applicant.

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5. Sh. H.K. Gangwani appearing for the respondents in his reply contended that the advertisement was issued in the year 1998 and the candidates who appeared were interviewed on 8.2.99 against the existing and anticipated vacancies. A panel of five candidates was prepared where the applicant was at serial No.5 in the order of merit. First four candidates have been appointed against the available vacancy and as the antecedents of the applicant were verified and it took time the report was received only on 22.8.2000 and the applicant could not be considered as no anticipated vacancy arose during the validity of panel for one and a half years. As no vacancy still exists appointment of the applicant cannot be considered as the panel expired on 7.8.2000. By placing reliance on a decision of the Apex Court in U.P. Bhumi Sudhar Nigam Ltd. v. S.N. Gupta, 1994 (4) SLR 461 it is contended that even an empanelled candidate has no right to claim appointment on non-availability of vacancies.

6. However, during the course of the hearing on the allegation of the applicant that the post for the general category vacancy has been diverted to OBC quota respondents were directed to produce the record and from perusal of the record it transpires that the vacancies have been diverted and to this regard by an order dated 13.8.2002 respondents have been directed to file an additional affidavit.

7. In their additional affidavit it is contended that the panel dated 8.2.99 was drawn only on the basis of merit and in case of direct recruitment as per OM dated 22.5.89 vacancies of SC/ST candidates who were selected on

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their own merit without relaxed standards will not be adjusted against the reserved share of vacancies and this is good for OBC as well. Five candidates empanelled for the post of Scientific Assistant 'B' (Mechanical) were on the basis of merit without any relaxed standards. Fifth candidate, i.e., applicant could not be offered appointment due to want of vacancy.

8. Shri K.C.D. Gangway, learned counsel appearing for the respondents by referring to his additional affidavit filed on 30.7.2002 contended that in the year 1998 Project issued an advertisement for filling up six posts of Scientific 'B' and one post of Scientific Assistant (Mechanical) before the issue of the appointment reservation position of HOCK was reviewed as per the roster and accordingly one SC, three ST and five HOCK back log of current vacancies were required to be filled up. By showing three posts reserved and the number of posts reserved have been restricted to 50% on the basis of post-based roster as per ON dated 2.7.1997.

9. He further stated that candidates empanelled in the select panel were selected on their own merits. It is further stated that subsequent, 13 posts of Scientific Assistant 'B' had been advertised through advertisement dated 26.4.2002, which includes 7 unreserved posts and the applicant has not applied against the same, but it is stated that the selection process is not yet over.

10. We have carefully considered the rival contentions of the parties and perused the material on record, including record of the respondents. In our

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considered view as it has been stated by the respondents that page-5 in the file pertaining to empanelling the notions were erroneous whereas the candidates have not been adjusted against the reserved quota but these reserved candidates have been selected on the basis of their own merit without any relaxed standards and were adjusted against the roster against the unreserved post and as the applicant was empanelled and was placed at serial No.5 in the select panel but in the absence of any vacancy to adjust him he cannot claim an indefeasible or vested right to be appointed. In view of the Apex Court decision (supra) even if one is empanelled has no indefeasible right to be appointed and in absence of any material on record to indicate that any vacancy other than as averred by the respondents was available applicant cannot insist upon his appointment and cannot claim it as a vested right. The OAO<sup>k</sup> is bereft of merit to that extent.

11. However, keeping in view the peculiar facts and circumstances of the case and the fact that due to pendency of the OA applicant could not apply against advertisement No.RMP(01)/(2002) issued on 26.4.2002 pertaining to 13 posts of Scientific Assistants 'B', 7 posts inter alias for unreserved category and as the applicant has also crossed the maximum age limit, it is also not disputed that the selection process is not yet over and the appointments are yet to be made, OAO<sup>k</sup> is disposed of, in the interest of justice, by directing the applicant to make an application against the advertisement dated 26.4.2002 within one week from the date of receipt of a copy of this order. Respondents are also directed to consider his application and allow him to participate in

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the selection process without insisting upon the upper age limit strictly in accordance with rules and instructions on the subject. If the applicant is selected in his category, as per his merit he shall be appointed accordingly. No costs.

S. Rajm

(Shaker Raja)  
Member(J)

'San.'

M.P. Singh

(M.P. Singh)  
Member (A)